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EXPOSITION AND DEFENCE

OF

EARL BATHURST'S ADMINISTRATION

OF THE

AFFAIRS OF CANADA,

WHEN COLONIAL SECRETARY,

DURING THE YEARS 1822 TO 1827, INCLUSIVE.

BY THE RIGHT HONOURABLE
SIR ROBERT WILMOT HORTON, BART., G.C.H.

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EXPOSITION,

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FROM the report of the debates which took place in the House of Commons on the 6th and 7th of March, 1838, as recorded in the Mirror of Parliament, it appears that very severe reflections were made upon the colonial administration of the affairs of Canada for some years prior to the formation of the Select Committee of 1828; while, on the other hand, no explanation or defence were offered from any quarter upon any of the points impugned in that discussion, nor was *any* allusion made to certain substantive measures of improvement which were brought forward during the colonial administration of Lord Bathurst. Having held the situation of Under-Secretary of State for the Colonial Department for six years prior to the year 1828, I feel myself called upon to vindicate the acts complained of, and to point out those measures of improvement, founded upon the soundest views of policy, which were brought forward under the administration of Lord Bathurst.

I was examined by the Canada Committee in 1828, being myself a member of that Committee.

My examination will be found in Appendix B. Sixty-four Queries were put to me; my answers to those Queries (which, for the sake of convenience, I have numbered from 1 to 64) will be found to explain the various points which occupied the attention of that Committee. The points of complaint which were more specially noticed in the debates of March ult. were,

1st, "The taking of money belonging to the Colony by the Governor of Canada without the consent of the local legislature; and, 2dly, the dismissal of certain militia officers by Lord Dalhousie upon a certain occasion." Upon the subject of the first complaint, one Query, and one only, was put to me; vide Query 29. As the point is argued in the following pages, I shall not enter upon it in this place. With respect to the dismissal of the militia officers, which was characterized in the debate as an "unconstitutional act," one Query only was put to me,—vide Query 63, Appendix B. In my answer I explained the grounds upon which Lord Bathurst decided to sanction the act. He was informed by Lord Dalhousie, "That his Majesty's Attorney "General in the Province of Lower Canada had "given an opinion that the old ordinances of 1787 "or 1789 had revived, and certain militia officers "having impeached Lord Dalhousie's *consequent* "judgment upon the occasion, founded, as it was, "upon the opinion of the Attorney General, not only

"refused to attend the summer musters, but other-
"wise exhibited a spirit of disobedience to orders;
"in consequence of which Lord Dalhousie dismissed
"those persons the circumstances of whose conduct
"and situation made such an example (in Lord
"Dalhousie's opinion) *necessary*." Lord Bathurst had, on these grounds, sanctioned the dismissal of those officers. I cannot consider the act of the governor, as confirmed by the Secretary of State, as being an "unconstitutional act;" but, in any degree to attribute the late disturbances in Canada to this act of dismission, is, in my judgment, to take a highly warped and prejudiced view of the case, diverting public attention from those main causes which have led to the late crisis in Canada, and which it must be the object of Government and Parliament to prevent for the future. But even supposing, for the sake of argument, that blame does attach to certain acts of Lord Bathurst's administration, was it *just* to waive all reference to certain measures of the highest discretion and policy,—as subsequent events have shown them to be? For the purpose of such a reference it is necessary to call public attention to a document which appears to have been little adverted to in Parliament during the late discussions upon the Canadas, viz., the Bill brought in by me into the House of Commons in the year 1822, "to make more effectual provision for the government of the provinces of

Lower and Upper Canada, and to regulate the trade thereof," which Bill was subsequently divided and the union part of it withdrawn.

The history of this Bill was thus given in the Annual Register of the year 1822:—

"A Bill was introduced by the ministers on the 20th of June to regulate the trade and government of Canada. It consisted of three parts: one applied to Canada those principles of free trade which, by an Act already mentioned, were this year extended to our West Indian colonies; a second class of provisions related to the distribution and appropriation of certain duties between the two provinces of Lower and Upper Canada; the third, and most important part of the Bill, new-modelled the constitution of the Canadas, as fixed by the Act of 1791, and was intended to bring the two provinces into a closer union by incorporating their Legislatures, to promote the general prosperity by the abolition of the feudal tenures, and to diffuse the English language and the spirit of the English constitution more uniformly among all the classes of the population. This part of the measure was keenly opposed by Sir James Mackintosh and other members of opposition. They founded their objections not on the intrinsic merits or demerits of the new arrangement, but on the period when it was brought forward, contending that time ought to be allowed to the people of the Canadas to

express their feelings and wishes upon the subject. All the merchants of London connected with the Canadas petitioned in favour of the Bill; and some of those who usually resisted the Government (Mr. Ellice, for example, and Sir Francis Burdett) thought that its provisions were marked by a spirit of liberality highly honourable to those who had brought it forward, and that it ought to receive the sanction of the legislature with the least possible delay. Still Sir James Mackintosh, and those who adopted his notions, persisted in their metaphysical objections: so that the ministers found that a measure which had been brought forward with the purest and most patriotic views could not be passed in the face of a most strenuous opposition, except under circumstances which might disturb or alienate the feelings of the Canadians. They were thus reduced to the necessity of separating the Bill into two parts. That which contained the enactments concerning trade and the apportionment of duties was passed: the other, which new-modelled the constitution, was postponed.

"Sir Francis Burdett expressed very earnestly his regret, that the theoretical nicety of a few of his friends, should have succeeded in preventing or delaying the enjoyment of the great practical benefits, which could have resulted from a Union of Upper and Lower Canada under one provincial legislature.

This statement is generally right, with one most important exception, viz., the distinct statement of

the fact, *that Sir James Mackintosh opposed the measure of Union after he had given his most unqualified assent to its being introduced, coupled with the assurance that he would not oppose it.*

I find in a letter which I addressed to Sir Charles Marshall, the late chief justice of Ceylon, and who drew up the Union Bill (being at that time Solicitor-General of Lower Canada), the following passage:—

"*Montagu Square, July* 21, 1822.

"I assure you that no sort of apology is necessary "for your remarks. You must, however, be aware "that, if the fourteen gentlemen persevere in their "determined opposition to our Bill at this late period "of the session, it will be rather *physically* than "morally impossible to carry it.

"The whole transaction is one which has hurt "me extremely. You well know that the Govern-"ment would never have contemplated the Union "during the *present* session had they not *distinctly* "understood that there would not be any *serious* op-"position in Parliament to the measure. The whole "transaction was based upon that distinct and un-"equivocal assurance."

I was assured by an individual of the highest respectability, a member of what was then called the Opposition, that the measure was considered valuable that no opposition would be offered by "the party" generally, or by any influential member of that party.

I became responsible to Lord Bathurst for such a result, and Lord Bathurst became himself responsible to the Government for the same.

The Union Bill was withdrawn. How could it have been otherwise? My letter was dated the 21st of July, and the catastrophe of the late Lord Londonderry took place on the 12th of August: but for the unfortunate state of the leader of the House of Commons, the Union Bill would have been fought to the last, notwithstanding the unexpected opposition raised against it; but, under the actual circumstances of the case, no such attempt could have been made. The favourable moment was lost. A colonial measure of first-rate importance, introduced by a Government and sanctioned by an Opposition, could not fail to carry with it a moral effect which *no contested measure of the Government could carry*.

To any member of the Opposition of that date who may inquire why this measure of the Union was not reproduced in ensuing Parliaments, I would, in return, ask the question, why did no suggestion *directly* proceed from some member of the Opposition that such re-introduction should take place?

Having expressed myself thus generally with respect to the measure of the Union, I would refer those readers who may be interested respecting the details of that measure as proposed in 1822, to Appendix A, which is a literal copy of the Bill, as amended by the Committee, for uniting the Legis-

latures of the Provinces of Lower and Upper Canada. If reference be made to the Queries and Answers in Appendix B, from Query 5 to 13 inclusive, my explanation of that Bill will be found in the minutest detail. It will be observed in my answer to Query 11, that I did not deny that improvements might be made in the Bill as proposed in 1822, especially after the lapse of six years, and the experience growing out of that period. I stated to the Committee, that in relation to the interests of the two Provinces, I did not myself see any alternative between the proposition of transferring to the Province of Upper Canada a port which should enable her to maintain her communication with the sea, and thereby effect her independence of the Lower Province with respect to revenue arising from duties on goods imported sea-wards, or, on the other hand, of carrying into effect the provisions of a Legislative Union. I was then asked, in Query 12, "Could a port be "given to Upper Canada by any other means than by "annexing Montreal to that Province?" To which I answered, "I am not aware of any other geogra- "phical facility of accomplishing that object." * I

* In reference to my answer to this question, I would refer my readers to a most valuable document, viz., a Report from the Select Committee of the Legislative Council of Upper Canada, signed the 15th day of February, 1838; in page 71 of which the Report is as follows:—"Another measure has been proposed, namely, the extending the limits of this Province, so as to include the Island of Montreal and certain parts of the adjacent territory. There can be no doubt that this would be of incalculable advantage to Upper Canada, by

was then asked, "Do you think that the objections "to the latter arrangement, on the part of the Lower "Canadians, would not be almost as strong, as to an "incorporating union of the two Provinces?" My answer was, "I entertain no doubt that very strong "objections would be made by the Lower Canadians "against such a proposal; but, I repeat, that under "the relative circumstances of the two Provinces, and "the bounden duty of the mother country to act justly "between them, I do not perceive any other than "these alternatives. I cannot, however, avoid re- "marking, that should considerations of mutual de- "fence, and a sense of common interest, create a "growing opinion in favour of a Legislative Union in "the two Provinces, there does not appear to me to "be any conclusive mode of adjusting their interests, "with respect to the appropriation of their common "revenue, other than by an identification of interests,

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giving her a port accessible from the ocean, and thus enabling her to raise a revenue commensurate with her wants. It would take from under the government of Lower Canada that portion of the population which has taken the lead in the late rebellious movement, and would place them under the influence of other laws and feelings, much to their own advantage, and to the benefit of both these Colonies. The country which would then form the Province of Lower Canada would neither be so likely to place itself in an attitude hostile to the mother country, nor would its hostility be so formidable; and, under this arrangement, Quebec might continue, as it ought to be, the residence of the Governor General. There are advantages in favour of this plan, which, in the opinion of your Committee, should recommend it strongly to the notice of Her Majesty's Government."

"involved in the measure of union; but, at the same "time, of a union which should guarantee to the "French population their laws and institutions in the "seigneuries, to the extent of preventing the combined "Legislature from voting away those laws and insti-"tutions, and at the same time should reserve space "enough in the unsettled part of the Province, so as "to allow the French population to spread itself within "the sphere of the operation of French law."*

* In reference to this answer of mine, I would call the attention of my readers to a passage in the Report just quoted in my last note, page 26:—"It is usual to condemn in strong terms the want of foresight of the British Government, in not having taken the most obvious measures for making the Province of Quebec, after its conquest, at once and decidedly a British Colony. What is meant by this is, that the English law, civil and criminal, should have been immediately established, and constantly maintained there; that all proceedings in the Legislature, and in Courts of Justice, should have been conducted in the English language alone; and that any peculiarities in the civil polity of the conquered people should have been wholly abolished. It is reasonable to suppose that such a course would, in progress of time, have made the Canadians more truly a British people; and, though it would have done violence to national feelings and prejudices, which deserve to be treated with respect, yet it could not have been accounted unjust on the part of their conquerors; and few persons, probably, would hesitate to acknowledge that their situation would have been greatly improved, by putting them perfectly on a footing with the other subjects of the British empire.

"Still it is not surprising that the Canadians were indulgently allowed to retain their peculiar laws, and the use of their language in official acts and in judicial proceedings. It arose, no doubt, from the circumstances of the time. At first, indeed, the English law, both civil and criminal, was introduced by Royal Proclamation, as a natural result of the conquest; and things continued on this footing from 1763 to 1774, when it was thought expedient to restore to them, by Act of Parliament, the enjoyment of their peculiar code of laws

I now proceed to quote the evidence of two witnesses before the Committee of 1828, who also expressed their opinion respecting the Union.

I have given the answers of Mr. Ellice upon this subject in Appendix B. Mr. Ellice's opinion went to this point, that the ultimate effect of a Union, judiciously executed, would be, "That all "separate habits and interests might be nearly "lost sight of, and the present collision of feel-"ings and prejudices give way to a general de-"sire to consult only the common good and the "prosperity of the country in the united Legisla-"ture." And in another answer he says, "I am "perfectly satisfied, a governor of conciliatory dis-

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'in all matters relating to property and civil rights.' This retracing of their steps by the British Ministry probably arose from observing that the French Canadians continued to be strongly attached to their former system, and from a conviction that it would be imprudent to leave them any strong ground for dissatisfaction, at the critical moment when the other Colonies in America were evidently on the point of revolting from the mother country. What might have been the conduct of the Canadians under other treatment we can only conjecture, but it is certain that the efforts, which were afterwards made by the revolted Colonies to allure them into their confederacy, were unsuccessful, and that, in general, the population of Lower Canada remained faithful to the Royal cause. The policy pursued by the Government was natural under the circumstances, and seems to afford no just cause of complaint, though its consequences at this day are, no doubt, to be regretted, as well on account of the Canadians themselves, as of their fellow subjects of British birth; for, unquestionably, their system of land tenures, and their civil code in general, is much less calculated to advance the prosperity of the country than the laws of England, which their prejudices have hitherto prevented the Legislature from adopting."

"position, popular character, and good sound sense, "acting upon instructions from this country, founded "on liberal principles, would have no difficulty in "balancing and conciliating the different parties in "the Legislature, and procuring from them ample "means of improving the institutions and promoting "the general interests of both provinces."

Mr. Ellice, however, gave his opinion, that if it were possible more to satisfy the Provinces of Lower and Upper Canada by any other arrangement than the whole measure of a Union, he should be satisfied to sacrifice a great deal for that object.

The opinion of Mr. James Stephen, now Under Secretary of State, as given before the Canada Committee, on the subject of a Legislative Union, is as follows:—

"When thinking, as I have often thought, on the "apparent fragility of our tenure of the Canadas, "one, and only one, mode of strengthening it has "occurred to me. I would bring the French and "English representatives with an equality, or some "approach to equality of numbers, into the same "Legislature. I would appoint over them a go-"vernor possessing temper and wisdom enough to "moderate between the two parties. By maintain-"ing a severe regard to justice, and to the constitu-"tional rights of the King's subjects of every class, "he might acquire a large and legitimate influence. "This, I know, is a task not to be committed to "vulgar hands. But I am much mistaken if a great

"and permanent accession of power to this country "would not be derived from the mild, firm, and just "management of the two great parties, equally "balanced and counterpoised in the same assembly."

So much for opinions expressed in 1828 with respect to the measure of the Union.

I now proceed to opinions expressed in 1837, fifteen years since the failure of the Union Bill in 1822, proposed under Lord Bathurst's Administration. In the Upper Canada Herald, on the 5th of December, 1837, will be found the following passage:—

"We mentioned in our last number that we should continue our remarks on *the union of the Provinces*, and we intended to show that the differences between the Provinces could be easily set at rest by the authority of the Imperial Parliament. Recent events have so completely altered the state of affairs in the Lower Province, that we can no longer argue on that ground.

"We would not disfranchise a man because he is a reformer or radical; but when he becomes an actual *rebel*, he has thereby disfranchised himself.

"One half of Lower Canada has been actively engaged in rebellion, or in making preparations for it; and the *habitans* have thereby become obnoxious to

the highest punishment of the law, instead of being entitled to sit as legislators, either personally or by their representatives. In whatever way the Imperial Parliament may deal with the revolted districts, there can be no doubt that the elective franchise will either be withheld from them entirely, or be conceded under such regulations and restrictions, that the political power of the French Canadians, as a party, is overthrown for many years, and before those years shall have passed away, emigration will have raised the British part of the population to an equality, at least, with the Canadians in numbers.

"We may safely assume, that the power of the French Canadians, as a political party, is entirely broken, and, therefore, *the Provinces may be united, with perfect safety to this Province, and with great advantage to both.* A unity of legislation and action, which can hardly be obtained but by one legislature, is essential to the proper adjustment of several important questions between the Provinces, as the disposition of the revenue, the improvement of the St. Lawrence navigation, identity of commercial regulations, and a combined action for all purposes of general improvement, in which the prosperity of one province so much promotes that of the other. And in order to make Lower Canada a British Province, the union will be, if not necessary, at least highly important.

"N.B. The Montreal Gazette of the 14th December observes, that these are the views of 'every per-

son of political experience and integrity in *both Provinces*;' and that 'upon the Union in question, the sovereignty of Great Britain over these Colonies solely depends.'

In the Montreal Gazette (Lower Canada), of the 19th of December, 1837, occurs the following passage:—

"In all future legislation for this Province, the first questions that ought to present themselves to an intelligent member of parliament, ought to be the following:—What are the moral and intellectual capacities of 'the great majority of the people?' Is there any portion of the people better informed than another? Is that portion likely to become more numerous, and the predominant one in course of time, and less liable to reject the true principles of the monarchical scheme of Government of Great Britain? What are the fundamental causes of the late insurrection? By whom was it instigated, promoted, and abetted? What portion and denomination of her Majesty's subjects flew to arms in order to suppress it, without previously considering the necessity of directing an address to the throne, expressive of their loyalty? What are the true causes of the failure of the experiment of 1791, 'to assimilate the Canadians,' as Mr. Pitt said he intended to do, 'to the *language*, the manners, the habits, and, above all, the laws and constitution of Great Britain?'

"With this short category of questions before him, no intelligent and patriotic member of parliament can be at a loss to apply himself to the important task of legislating for the Province.

"But let the wreck of Mr. Pitt's Constitution of '91, to a people who could neither enjoy nor appreciate such a boon, be the constant beacon of his conduct.

"The time has come, when a new foundation must be dug, and a new superstructure raised. The laws that are to be passed, in regard to Canada, must no longer be of a temporary, expedient, or negative character, but of a positive, decisive, and permanent nature. In contending for so long a period for their rights and privileges, as British subjects, it must be admitted that the loyal part of the community, which is entirely composed of persons of English and American birth and descent, cannot always be acting on the defensive. They must be assured that they live in a Province of the British Empire, enjoying British institutions and laws, and subject to no dominant legislation, except that of the Imperial Parliament, and their own free Representatives in Provincial Assembly. They must be put on the same footing, in this respect, with their fellow subjects in Upper Canada; and we are fully and thoroughly convinced, that no measure, short of *the Legislative Union of both Provinces*, will ever be able to effect the lasting peace and prosperity of either Province."

The following is an Extract from the Address of the Constitutional Association of the city of Montreal, to the inhabitants of the Sister Colonies :—

"In the year 1791, the division of the Province of Quebec into the two separate Provinces of Lower Canada and Upper Canada, was carried into effect.

"It was conceived that this measure, by which 'one division should consist, as much as possible, of those who were inclined to the English laws, and the other, of those who were attached to the French laws, was best adapted to put an end to all disputes of a legal sort, to reconcile the jarring interests and opposite views of the provincial inhabitants, to prevent a great degree of animosity and confusion, from their rooted opposition of interests, and to obviate dissatisfaction from a great ascendancy of one party over another in a united legislature.'

"The experience of fifty years of *separation between the Provinces*, and the present insurrectionary and seditious spirit exhibited in Lower Canada, plainly show how far the advantageous results, anticipated from that *impolitic* and *undesired measure*, have been realized."

The last document to which I shall refer upon the measure of the Union, is an extract from the Report of the Legislative Council of Upper Canada, from which I have already quoted in two notes.

The opinion respecting the Union is expressed in this Report with very great caution. The Report says, in page 68, "The British inhabitants of Lower "Canada are strongly impressed with an opinion, that "after all that has taken place, the removal of this "difficulty respecting the Civil List would not alone "be sufficient, and that the Province cannot prosper "unless some material change is made in its Constitu- "tion. The French Canadians are not an enterprising "people; they care little about commerce, and are "not zealous promoters of public improvement; and "besides this, it is said that their laws and customs "have an unfavourable tendency, and that their igno- "rance and national prejudices forbid all hope of "amendment through the agency of the Legislature.

"A Legislative Union of the Provinces is pro- "posed, and very earnestly pressed as the most effec- "tual remedy. It probably is desired by the British "population of Lower Canada, with very few excep- "tions, and their desire is natural,—they may gain "much, and can scarcely lose by the change. The "people of Upper Canada, on the other hand, would "be committing much to hazard by the trial; they are "happily not in that state that should make them "indifferent to any dangerous experiment. Hitherto "a fear of ill consequences to themselves has prevented "the inhabitants of Upper Canada from seconding the "desires that have been expressed for a Legislative "Union. The situation of Lower Canada is now

" such as calls for some important change; for it is,
" perhaps, not too much to say, that the laws no longer
" afford to the British population there sufficient se-
" curity for their lives and properties. Although a
" strong military force must probably, under any
" circumstances, be maintained in Lower Canada for
" some time to come, yet that is not the resource that
" should be principally looked to for the future tran-
" quillity of the Province; and if it were certain that
" peace and safety can be no otherwise assured to our
" fellow subjects there than by the desired Legislative
" Union, then your Committee would not hesitate to
" say, that the people of Upper Canada should consent
" to that measure, as they should, indeed, to any other
" that, upon a deliberate consideration of the case,
" may appear to Parliament to be the most expedient."

Again, in page 71:—" So far as we may be
" permitted to determine the question, upon a view of
" the interests of Upper Canada merely, our inclination
" is against the change; but if without an Union the
" British population in Lower Canada cannot be se-
" cured in the enjoyment of British institutions, then,
" of course, it must follow, that the only question for
" consideration would be the terms of the measure and
" the fittest time for proposing it." This alternative proposition expressed in the Report is hardly in keeping with the sentence which immediately succeeds it. " Your Committee forbear to enter upon
" a particular discussion of these points, because they

"cannot convince themselves that an union with "Lower Canada alone would be safe or desirable for "the inhabitants of this Province. If a mature con- "sideration of the present and probable future state "of Lower Canada should seem to compel the Im- "perial Parliament to favour that project, there can "be no doubt that ample opportunity will be afforded "to the people of both Provinces for offering any "suggestions."

Lastly, upon this subject I would call the particular attention of my readers to two letters signed "M.," published in the Morning Chronicle on the 2d of January and on the 23d of June, 1838. Those letters are, within my own knowledge, written by a person whose local experience, as well as general capacity, entitle his opinions to *the utmost respect*. Those persons who are really and deeply interested in the question of Canadian policy, will do well to give those letters the most attentive perusal; for my own part, it is not my object to offer an opinion as to the future, I am only seeking to justify the past, and, in vindication of Lord Bathurst's government, to demonstrate that if the measure of the Union had been adopted in 1822 it would have prevented the possibility of the occurrence of such scenes as have been lately witnessed in the Canadas. The Earl of Durham, in his Proclamation to the people of Upper and Lower Canada upon his landing, says, "If you (the people of British America) on your side will

abjure all party and sectarian animosities, and unite with me in the blessed work of peace and harmony, I feel assured that I can lay the foundations of such a system of government as will protect the rights and interests of all classes, allay all dissensions, and permanently establish, under Divine Providence, that wealth, greatness, and prosperity of which such inexhaustible elements are to be found in these fertile countries." I will only observe, in reference to this passage, that the object of those who originally contemplated the Union was strictly to frame a measure that would "*protect the rights and interests of all classes, allay all dissensions, and permanently establish, under Divine Providence, that wealth, greatness, and prosperity of which* (as his Lordship justly remarks) *such inexhaustible elements are to be found in those fertile countries.*"

I now proceed to the charge made AGAINST Lord Bathurst for having directed necessary payments to be made from the provincial revenue without the sanction of any Act of the Legislature. On this subject, the Committee of the Legislative Council of Upper Canada, after severely commenting upon the impolicy of having placed the Civil List within the annual control of the Assembly (a measure subsequent to Lord Bathurst's administration), proceed thus: "Even so early as the time of Lord Bathurst, "the government of Lower Canada was in a state of "such embarrassment and confusion, *from the total*

"*failure of the Assembly to provide for the Civil List,* "that Lord Dalhousie, then Governor-General, was "directed to cause the necessary payments to be made "from the provincial revenue without the sanction of "any Act of the Legislature. We do not say that "this direct violation of the law of the Province was, "or could be, justified by any necessity. On the "contrary, it would have been better, in our opinion, "even to have repealed the Constitutional Charter "by the unquestionable authority of Parliament than "to suffer it to remain in full force and at the same "time to sanction its direct infringement by an Act "of the Executive Government.

"But the fact, that the difficulties arising from a "want of a settled provision for the ordinary expenses "of the Civil List did lead the Government to adopt "a measure so certain to be injurious to their cha- "racter and to the future peace of the Colony, and to "preclude all amicable intercourse between the Go- "vernment and the Legislature, is of itself an un- "answerable proof that it ought never to have been "thought possible to leave the affairs of the Colony "upon such a footing."

In respect to this measure, it was in the highest degree incorrect on the part of the Legislative Council to state that Lord Dalhousie was *directed* to cause certain payments to be made. The truth of the case will be found in the 29th query put to me, when the same mistake was made by Mr. Ellice.—

Mr. Ellice stated "that the Governor of Lower "Canada has been *instructed* to remedy the difficulty "arising from the Assembly not voting supplies by "his own warrants on the receiver, to whom the "taxes are paid, under the provisions of the Canada "Trade Act; have you any information to give the "Committee upon that point?"—Answer: "The "Governor did not receive instructions to appropriate "any duties received under the Canada Trade Act, "but, under the *emergency* in which he has been not "unfrequently placed from the total cessation of all "supplies to carry on the government of the Colony, "he (the Governor) has drawn upon the unappro-"priated revenue, and such a proceeding is necessarily "to be justified only from the extreme difficulty and "embarrassment of his situation. *The discretion* "*which he has been compelled to exercise on such* "*occasions has received the sanction of the Secre-*"*taries of State.*"

Every person of common fairness must admit that there is a substantive distinction between a Secretary of State giving directions for the commission of an act abstractedly unconstitutional and his sanctioning such a proceeding on the part of a Governor *compelled, by the force of circumstances, to resort to such an alternative.* But if the censure of the House of Commons is to be passed upon Lord Bathurst for having sanctioned such a measure, let us examine if no similar measure has occurred since that period. It is no apology of one measure to

show that it can be paralleled by another, but where necessity in one instance has prompted a measure, and necessity in another instance has suggested one similar in principle, it appears hardly just to extend censure to the first and to exempt the latter from equal censure. The Report of the Legislative Council of Upper Canada, vide page 54, upon this subject, is expressed in the following words: "The Govern- "ment having left itself without resource has been "left by the Assembly wholly destitute; and after "four or five years of unmitigated insult and violence, "without a single grateful return or respectful ex- "pression, the Government has at length been com- "pelled to pay its judges and other officers their large "arrears of salaries out of the military chest of Eng- "land, while a large amount of unappropriated monies "is lying in the Provincial Treasury; and when the "remedy which it is proposed to adopt for this in- "convenience and injustice is considered, it will be "seen at once how strongly inconsiderate has been "the policy of the Government in this very delicate "and important matter.

"The measure proposed by Lord John Russell's "resolutions of 1837 is to take from the Provincial "Treasury the money which the Assembly has de- "clined to grant. The provincial statutes, by which "this money was raised, *reserve the right of appro- "priating it expressly to the Legislature,* and the "taking it by any other authority is a direct violation "of the law and a plain infringement of the Consti-

" tution. How much better would it have been to
" have exerted the firmness necessary to preserve
" what by law and justice belonged to the Crown
" than by tamely surrendering it, to incur the ne-
" cessity of dishonouring the Crown, and furnishing
" the Assembly in the midst of their factious vio-
" lence with a ground of complaint infinitely more
" substantial than all the grievances they had been
" inventing for years!

" Far from being improved in temper and de-
" meanour by the unlimited confidence that had been
" so incautiously placed in them, the Assembly became
" more rudely violent than ever, and, instead of em-
" ploying themselves in anything useful to the Colony,
" they proceeded from one intemperate act to another,
" till at last they impeached the Governor-General,
" the Legislative Council, and the King's Ministers in
" ninety-two outrageous resolutions; such, in matter
" and manner, as it might have been supposed would
" have discouraged any further attempts to cure the
" evils of Lower Canada by conciliating the Assembly.
" In one sense, the course taken by the Assembly was
" honest; for in these resolutions they plainly an-
" nounced to the King's Ministers that they would do
" nothing that had been expected of them; that what
" they wanted was a Republican Government, which
" his Majesty might grant them if he pleased, but
" which they were resolved at all events to have, and,
" if necessary, by rebellion, in which they doubted
" not they would be assisted by the United States."

The inference that I draw from these parallel acts is, that there is something defective in the extreme in the Constitution of those Provinces, and that such a defect requires an early and efficient remedy. *If I do not deceive myself, I have now succeeded in showing that under Lord Bathurst's administration a real and adequate remedy was suggested for the inherent difficulties growing out of the Act of* 1791, *which established the Constitution of the Canadas as it now exists.* For the reasons given by me in the fullest detail in answer to Queries submitted to me, —vide Question and Answers, Nos. 1, 2, 3, and 4,— I do not hesitate to say, that it would have been *impossible* that such misconstruction could have been put forth and acted upon by *an united Legislature*. The evils, consequently, which have grown out of such misconstruction, in the case of a single Legislature, would have been avoided. It was *no fault* on the part of Lord Bathurst that the two Legislatures were not united, and that the reign of common sense did not prevail, in contrast with that of spurious complaint and unreasonable demand. I have shown that the failure of that measure was no fault on the part of Lord Bathurst.

I have now to advert to measures that took place under the administration of Lord Bathurst, which, had they been followed up during the years subsequent to 1825, would have opposed a most efficient prevention, though of a different character, of those disgraceful scenes which have lately been acted in

the Canadas. I allude to that system of colonization which was effected in the years 1823 and 1825. In 1823 and 1825, a body of more than 2000 Irish emigrants left the shores of their native country, under the protection of the Government of that day, to escape the misery and destitution beyond human endurance which formed the rule, and not the exception, of their existence at home. They were removed to Upper Canada, and most liberally treated. Their colonization, notwithstanding it was effected at a high rate of expense under the incident of a first experiment, so far from being an unprofitable expenditure, involved a material national saving, and was, in every sense, an economical measure. These colonists now form a wealthy body of yeomanry; and what their feelings are and have been under kind treatment will best be appreciated by the perusal of the following letters, which have passed between Sir Francis Head, the late Governor of Upper Canada, and myself:—

"*Cavendish Square, May* 21, 1838.

"My Dear Sir,

"Will you allow me to call your attention to "page 355 of Minutes of Evidence taken before a "Select Committee on Emigration in 1827,* in

* Colonizations of a similar character might now be effected at a less rate of expenditure. The subject is too important to be discussed incidentally; but the proof as to the economy of a measure for colonizing Irish pauper agricultural labourers, for whose labour there

" which, among other documents, you will find ad-

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is *no* demand in Ireland or Great Britain, and, secondly, for whose labour there is also no adequate demand in a British colony like Upper Canada, is the plainest imaginable. *If such demand did exist*, there would be no necessity for colonization, which is an expedient *only to be resorted to* when the labour market in a colony is drugged and can for the moment absorb no more. I am preparing a publication specially on this subject; but I may here mention that the test of the economy of such a measure was pointed out in the clearest manner in the eighth resolution of the select class of the members of the London Mechanics' Institution. After having summed up the whole subject in the previous resolutions, the eighth resolution records that, " in reference to national wealth, if the expense of emi-" gration be less than the expense of home maintenance there would " be a decided economy instead of an apparent expense in the applica-" tion of national capital to the purposes of regulated and assisted " emigration."

The strongest objection which has been preferred against the policy of colonization, as a national measure, is *the presumed expense* involved in it. It is remarked that it is very true that an Irish pauper is much happier in Canada than he would be in his own country; but then it is asked what expense is necessary to remove him. It is admitted that he is *not* wanted in Ireland—it is admitted that he *is* wanted in Canada—but still comes the question, who is to pay the money for his removal? If, for the sake of argument, it be admitted that there are a thousand married labourers in Ireland, with a wife and three children each on an average, forming a body consequently of five thousand persons, and if it be also admitted that there is no demand for the labour of those thousand labourers in Ireland, and that they have no species of property, it is self-evident that, *unless they are supported in some manner, they must perish.* Let it be supposed that they *are* supported at the miserable rate of 2*d.* per head per diem, this 2*d.* per head must either be the gift of charity or the result of spoliation. The annual expense, therefore, of maintaining these labourers and their families in their own country amounts to 15,208*l.*; but, according to the evidence of Lieutenant Rubridge, which I am about to publish, and who has been 19 years a settler in Canada, supported by the strongest previous evidence, these one thousand labourers might be located as Colonists in Upper Canada at the expense of 60*l.* per family, or 12*l.* per head, equal to 60,000*l.* A perpetual annuity therefore (I employ this by way of illustration) of 2000*l.*, the funds being at 90, would enable a loan of 60,000*l.* to be raised; whereas, independent of the increase of these parties in

Ireland, supposing them to be charity-fed, their maintenance at 10*d.* per day per family constitutes a perpetual annuity of 15,208*l.*, which represents a capital sum (*cæteris paribus*) of 456,240*l.* instead of 60,000*l.*, the sum necessary for their colonization. Of course I am arguing on the hypothesis, that there neither *is* nor is likely to be a real demand for their labour *in* Ireland, or Great Britain.

Surely *common sense* points out to any person willing to think, that a perpetual annuity of 15,208*l.* per annum is precisely as much a tax *in principle* upon Ireland as a tax of 2000*l.* per annum, under which they might be colonized. The policy, therefore, of effecting the colonization of such parties, and converting them into happy and wealthy yeomanry in Canada, as compared with the policy of keeping them in Ireland as miserable paupers and beggars at 2*d.* per diem, is in the exact ratio that a perpetual annuity of 2000*l.* per annum bears to a perpetual annuity of 15,208*l.*, or that a capital sum of 60,000*l.* bears to a capital sum of 456,240*l.*

An emigration of labourers who expatriate themselves with the view of being absorbed as labourers in the first instance in a colony, necessarily has its limits, which are measured by the real demand in the labour market; but their colonization with due assistance, supposing an indefinite supply of fertile land, has no definite limitation. I trust that the day may soon arrive when truths like these, which have slumbered in the *unread* Reports of the Emigration Committees of 1826 and 1827, only to be revived in the resolutions of a select class of London mechanics, may find *some favour* in the houses of Parliament, and be matured into measures of substantive relief for Ireland. The Irish Poor Law Act will have the effect of an optical instrument, and make certain truths *apparent*, which happily can *now* no longer be concealed. I will not be tempted to add *more* in *this* note on this momentous subject, on the due comprehension of which the prosperity of Ireland, and the repose of England depends. I addressed a letter to Mr. O'Connell in November, 1830, now nearly eight years ago. This letter was published in the "Times." I then told him, "that "I was prepared to show that, as far as the emigrant was concerned, "emigration, when duly assisted by capital (in other words, judicious "colonization), had produced the greatest change from human misery "to human happiness that had ever been recorded in the history of "mankind;"—and I alluded specially to the experimental emigrations of 1823 and 1825. The publication in which I am now engaged will, I think, convince the most sceptical of the truth of that assertion.

"I need scarcely remind you that these emigrants, "while in Ireland, were in a state of the utmost "destitution. Had they remained there they would "probably have perished under the combined inflic- "tion of physical want and mental despair.

"As far back as the year 1826, their gratitude "for the favours conferred upon them in removing "them from Ireland to Canada was unbounded. "Even at that now distant period they thus express "themselves:—

"'For the liberality of a humane and benevolent "sovereign no language can express our gratitude, "in having removed us from misery and want to a "fine and fertile country, where we have the certain "prospect of obtaining, by industry, a comfortable "competence; and we trust, my Lord, the report of "the progress we have already made on our lands "will not fall short of your Lordship's expectations, "taking into consideration that we have had to con- "tend, in addition to inexperience, with the enemy "of all new comers, the fever and ague, to a very great "extent; notwithstanding which, we have been able "to provide ample provision to support our families "comfortably until we harvest our next crop.

"'We have reason to be thankful for the wisdom "and discretion which appointed over us so honour- "able, kind, and indefatigable a superintendent, who "has used every exertion and care in providing for "our every want.

"'Above all we rejoice that, in this happy coun-

" try, we are still under the government of our " illustrious Sovereign, to whose sacred present go- " vernment we beg to express the most unfeigned " loyalty and attachment. We beg most respect- " fully to add that we cherish the hope that more of " our unfortunate and suffering countrymen, at no " distant period, may, by means of the same generous " feeling, be brought to share the blessings we enjoy.'

" Again they say:—

" 'Having now resided about a twelvemonth on " our lands we have every reason to be thankful for " the excellent locations assigned us; and we trust, " notwithstanding the difficulties our inexperience " has had naturally to contend with, that the inves- " tigation our worthy superintendent has caused to " be made of our actual improvements, will not be " uninteresting to his Majesty's Government, par- " ticularly to your Lordship, whose zeal in further- " ing emigration to this Province is so eminently " conspicuous.

" 'We take this opportunity of expressing to your " Lordship how much of gratitude we owe to the " Honourable Peter Robinson, our leader, our ad- " viser, our friend, since we have been under his " direction, particularly for his exertions in ad- " ministering to our comforts during a season of " sickness and privation.

" 'We beg to assure your Lordship of our loyalty " and attachment to our gracious Sovereign's most " sacred person and Government.'

"Again:—

"'We have been brought from a country where "we had many difficulties to contend with, and sup- "ported here to this time at the expense of Govern- "ment; our every want has been anticipated and "provided for, and independence not only brought "within our reach, but actually bestowed upon us.'

"And again:—

"'We trust our orderly conduct as members of "society, and steady loyalty as subjects of the Bri- "tish Crown, will evince the gratitude we feel for "the many favours we have received.

"'That the blessings of a grateful people may "surround the throne of his Majesty is the sincere "prayer of

"'Your Lordship's

"'Most respectful humble Servants.'

"When I endeavoured to point out to parties ad- "verse to emigration these passages so redolent of "gratitude and loyalty, I was told they were ad- "dresses hatched up by persons not really represent- "ing the emigrants; that the project of converting "miserable and destitute paupers in Ireland was a "senseless and dangerous project; and that if the "day should arrive when, either from a rupture with "America or a conflict with the French Canadians, "their loyalty and gratitude would be put to the "test, they would be found miserably wanting.

"I now beg to know whether the emigrants "known in Canada as Robinson's Emigrants were

" or were not at the period of the late crisis in Ca-
" nada in 1838 in the exercise of that loyalty which
" they professed in the year 1826?

" I remain, my dear Sir,

" Your faithful humble servant,

" R. WILMOT HORTON.

" Sir Francis Head, Bart."

" 62, *Park Street, Grosvenor Square,*
" *May* 21, 1838.

" MY DEAR SIR,

" I have just received your letter of this day,
" in which you inquire whether certain emigrants to
" whom you have alluded ' were or were not at the
" period of the late crisis in Canada, in 1838, in the
" exercise of that loyalty which they professed in the
" year 1826?'

" My reply to your question is in the affirmative.
" On receiving intelligence that Toronto had been
" attacked by a band of rebels, the settlers to whom
" you have alluded were among those who at once
" marched from the Newcastle district, in the depth
" of winter, nearly 100 miles to support the Govern-
" ment.

" On finding a body of the Honourable Peter
" Robinson's settlers self-assembled in line before
" Government-house, I went out and thanked them;
" to which they replied that they were doing well in
" the world, that they felt grateful to the British

"Government, and that they had come to fight for "the British constitution."*

"I remain, my dear Sir,

"Your faithful humble servant,

"F. B. HEAD.

"The Right Hon. Sir R. W. Horton, Bart."

Such is the Irish character when good feelings engendered by kind treatment are allowed to predominate. May this practical lesson not be thrown away! and may so easy, and as I contend so economical, a process be no longer despised of converting Irish disaffection into Canadian loyalty.

On this subject it may be instructive to read the following observations in the Report so often alluded to in page 10 :—

"But there is nothing connected with this re-"markable crisis (referring to the crisis of the late

* Mr. Mackenzie, of Canadian notoriety, was, in 1825, the editor of the Colonial Advocate; and on the 8th of December in that year an article appeared headed "*Mr. Robinson's Irish Settlers*," of which the following is a copy:—"We have information which may be de-"pended on, stating that these people have an ardent desire to go to "the United States, and that they frequently desert. No less than "*thirty* of them decamped lately in one night. To how much more "useful a purpose might 30,000*l.* have been expended than in recruit-"ing in Ireland for United States soldiers by Canadian councillors!"

The first part of this mis-statement was contradicted in the Weekly Register of the 26th of December, 1825, by a Mr. Fitzgibbon; with respect to the second part, the paragraph respecting the 30,000*l.* shows the *futile* hopes which were entertained by the disloyal themselves of the disloyalty of these praiseworthy settlers.

" attempt at rebellion) upon which it is so satisfactory
" and pleasing to reflect as the very striking proof it
" has afforded of the loyal and patriotic feeling of the
" great body of the people of Upper Canada. The
" instant it was known that the Government was
" threatened with violence, all distinctions of religion
" and country were laid aside, and, with a noble
" ardour which can never be forgotten by those who
" witnessed it, the people rushed forward by thousands
" to put down rebellion and to preserve the supremacy
" of the laws. While neither wealth nor station was
" felt to place the possessor above the common duty
" of opposing with arms this unnatural rebellion, the
" humblest inhabitant of the country gave also his
" services with cheerfulness, and none more so than
" the coloured population, whose brave, faithful, and
" steady conduct have entitled them to great credit.
" In the course of this service, and of the more ardu-
" ous and protracted exertion which it has become ne-
" cessary to make on our frontier from causes to which
" we shall presently advert, it has been made most
" evident that Upper Canada possesses an inestimable
" advantage in the hardy, intelligent, and brave popu-
" lation which for many years past has been flowing to
" us from the United Kingdom. The loyalty of our
" native Canadians, which was conspicuous in the last
" war, is now aided by a host of spirited and zealous
" officers of all ranks who have acquired great ex-
" perience in the army and navy of Great Britain, and

"by thousands of brave soldiers who have become "settlers among us, and whose glory it is to devote "their lives to the service of their Sovereign. With "hands and hearts like these a militia is soon rendered "efficient and formidable; and it may be doubted "whether any country of equal population has better "materials for self-defence than the Province of "Upper Canada. It is at least certain that no "Colony of Great Britain can ever have given a "more decided proof of attachment to the Crown and "of a determination to support the Constitution and "laws."

Without the successful stimulus given to emigration generally by those successful colonizations of 1823 and 1825, it may be doubted whether the aid derived from the "hardy, intelligent, and brave population" referred to in the Report would have been forthcoming; and when the additional aid be considered that would have been afforded if the system of colonization, carried into effect under Lord Bathurst's administration in 1823 and 1825, had been carried on, as recommended by the Report of the Emigration Committee of 1827, that measure of colonial policy should not be set aside when the merits and demerits of Lord Bathurst's administration are under review, still less when they are *under censure*.

Such then is my exposition and defence of Lord

Bathurst's administration of the affairs of Canada when Colonial Secretary during the year 1822 to 1827 inclusive. I must finally be permitted to add a few words foreign to the especial subject of this publication, but due to the memory of one of the most sensible and honourable men. The character of Lord Bathurst, as an efficient public servant at the head of an important political department, is very imperfectly appreciated by the English public. Undoubtedly his general politics did not respond to the movement of the latter days in which he lived; but in all cases where first-rate practical good sense, and a rapid yet discreet view of intricate subjects was essentially required, Lord Bathurst possessed a mind far more able to grapple with difficulties than many of those persons who have underrated his political efficiency.

Lord Bathurst had no affection for political economy *by name*, but to the results of a wise combination of Colonial measures, which in their character might more or less belong to the science of political economy, no man was more alive.

I served under him as Under Secretary of State for the years 1822-23-24-25-26, and part of 1827. My opinions on several points were different from his, more especially on the Catholic question; but such difference never *for one instant* affected the friendly and confidential relations that subsisted between us, and, like his friend the late Duke of York, he was too *liberal* to allow political differences to

disturb relations which were valuable from a variety of causes independent of mere speculative political opinions.

It was under Lord Bathurst's Colonial administration that those investigating Commissions were first established, from whose labours, whatever minor errors they may have fallen into, much Colonial advantage and improvement has unquestionably proceeded. He first introduced the preparation of what were called the "Blue Books," which name is now even adopted in Parliamentary documents; and when in my evidence before the Canada Committee in 1828 I stated my opinion "that it was expedient that the most unqualified publicity should be given both in the Colonies and the mother country to all pecuniary accounts, appropriations, and matters of finance," I only stated the opinion which had led to the adoption of the Blue Book system, which system, as far as I have been able to ascertain, has been approved by the most rigid economists.

Above all, for a daily sedulous discharge of the peculiar duties of his office as Colonial Secretary, no public man who has ever filled that situation has been more remarkable. These may be facts unknown to the English public, but they *are* known to those persons who had opportunities of communication with the late Lord Bathurst; and, as his friend, I am happy to record them without fear of contradiction from any quarter.

APPENDIX (A.)

A BILL (as amended by the Committee) for uniting the Legislatures of the Provinces of *Lower* and *Upper Canada*.

Preamble.

WHEREAS in the present situation of the Provinces of *Lower* and *Upper Canada*, as much with relation to *Great Britain* as to each other, a joint Legislature for both the said Provinces would be more likely to promote their general security and prosperity than a separate Legislature for each of the said Provinces, as at present by law established;

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That so much of an Act passed in the thirty-first year of the reign of his late Majesty King George the Third, intituled, "An Act to repeal certain parts of "an Act passed in the fourteenth year of his Majesty's reign, "intituled, 'An Act for making more effectual provision for the "'Government of the Province of *Quebec* in *North America*, "'and to make further provision for the Government of the said "'Province,'" as provides for the composing and constituting within each of the said Provinces respectively, a Legislative Council and Assembly, and for the passing of laws by the Legislative Council and Assembly of each Province, shall be and the same is hereby repealed, except in so far as the same or any of the provisions thereof, may by this present Act be continued or applied to the purposes of the joint Legislature to be constituted in manner hereinafter mentioned: Provided also, that so much of an Act passed in the fourteenth year of the reign of his said late Majesty, intituled, "An Act for making more effectual pro-"vision for the Government of the Province of *Quebec* in *North* "*America*," as is repealed by the said Act passed in the thirty-

So much of 31 Geo. 3, c. 31, as provides a Legislature for each of the Provinces of Lower and Upper Canada, repealed.

first year aforesaid, shall be deemed and taken to be, and shall remain repealed.

Henceforth to be one Joint Legislative Council, and one joint Assembly for both Provinces.

And be it further Enacted, That from and after the passing of this Act, there shall be within the said two Provinces, and for the same joint Legislative Council and one Assembly, to be composed and constituted in manner hereinafter described, and which shall be called "The Legislative Council and Assembly "of the *Canadas*;" and that within the said Provinces, or either of them, His Majesty, His Heirs or Successors, shall have power, during the continuance of this Act, by and with the advice and consent of the said Legislative Council and Assembly of the *Canadas*, to make laws for the peace, welfare, and good government of the said Provinces, or either of them, such laws not being repugnant to this Act, nor to such parts of the said Act passed in the thirty-first year aforesaid, as are not hereby repealed; and that all such laws being passed by the said Legislative Council and Assembly, and assented to by His Majesty, His Heirs or Successors, reassented to in His Majesty's name by the Governor in Chief in and over the said provinces of *Lower* and *Upper Canada*, or in case of the death or absence of such Governor-in-Chief, by the Lieutenant-Governor of the Province of *Upper Canada* for the time being, or in case of the death or absence of such Lieutenant Governor, then by the Lieutenant-Governor of *Lower Canada* for the time being, or in case there shall be no Lieutenant-Governor at such time resident in the Province of *Lower Canada*, then by the person administering the government thereof for the time being, shall be and the same are hereby declared to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever within the said two Provinces.

Joint Legislative Council to consist of the present Members of both Councils.

And be it further Enacted, That the present members of the Legislative Councils of *Lower* and *Upper Canada* shall, by virtue of this Act, and without any new or other commissions for that purpose, constitute together the Legislative Council of the *Canadas*, which said members shall take precedence in the joint Legislative Council according to the date of the instruments by which they were originally summoned to the Legislative Councils of the two Provinces respectively; and that it shall also

be lawful for His Majesty, His Heirs or Successors, from time to time, by an instrument under his or their sign manual, to authorize and direct the said Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, to summon to the said Legislative Council, by an instrument, under a seal to be transmitted by His Majesty to the Governor-in-Chief, or under any other seal which the said Governor-in-Chief shall be by His Majesty directed to use for the purposes of this Act, and which shall be called the Great Seal of the *Canadas*, and shall be applied only to the purposes directed by this Act, such other person or persons as His Majesty, His Heirs or Successors, shall think fit; and that every person who shall be so summoned to the said Legislative Council shall thereby become a member thereof.

Other Persons may be summoned.

And be it further Enacted, That such persons only shall be summoned to the said Legislative Council, as by the said above-mentioned Act, passed in the thirty-first year aforesaid, are directed to be summoned to the Legislative Council of the said two Provinces respectively; and that every member of the said Legislative Council shall hold his seat for the same term, and with the same rights, titles, honours, ranks, dignities, privileges and immunities, and subject to the same provisions, conditions, restrictions, limitations and forfeitures, and to the same mode of proceeding, for hearing and determining by the said Legislative Council all questions which shall arise touching the same, as are in the said Act, passed in the thirty-first year aforesaid, mentioned and contained, with respect to the members thereby directed to be summoned to the Legislative Council of the two Provinces respectively.

Such Persons only shall be summoned as directed by 31 G. 3.

And be it further Enacted, That the Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall have power and authority from time to time, by an instrument under the Great Seal of the *Canadas*, to constitute, appoint and remove the Speaker of the said Legislative Council.

Governor to appoint and remove the Speaker of the Legislative Council.

And be it further Enacted, That the members at present composing the Assemblies of the said two Provinces, shall, together with such new members as shall or may be returned for either

Joint Assembly to consist of the present Members of both, and to

continue until 1 July 1825, unless sooner dissolved.

of the said Provinces respectively in manner hereinafter mentioned, form and constitute the Assembly of the *Canadas*, and shall be and continue until the first day of July one thousand eight hundred and twenty-five, unless sooner dissolved; and that in case of a dissolution of the said Assembly, or of vacancies occurring therein, members shall be returned from the same counties and places, and in the same manner, and in the same numbers, except as hereinafter otherwise provided, as now by law they are returned within the two Provinces respectively.

Act of Upper Canada, 60 G. 3, to continue in force.

And whereas an Act was passed by the Provincial Legislature of *Upper Canada*, in the sixtieth year of the reign of his said late Majesty, intituled, "An Act for increasing the Repre-"sentation of the Commons of this Province in the House of "Assembly;" Be it therefore further Enacted, That the said Act, and all the provisions therein contained, except as hereinafter otherwise provided, shall remain in full force and effect, and shall be applied to the representation of the said Province of *Upper Canada* in the joint Assembly, in like manner as the same were applicable to the representation thereof in the Assembly of the said Province of *Upper Canada* before this Act was passed.

Governor of Lower Canada may erect new Counties, out of the Townships to be represented in the Assembly.

And be it further Enacted, That it shall and may be lawful for the Governor, Lieutenant-Governor, or person administering the government of the said Province of *Lower Canada* for the time being, from time to time as he shall judge expedient, from and out of that part of the said Province of *Lower Canada* which has been erected into townships since the number of representatives for the said Province was settled by proclamation, to form and erect new counties, by instrument or instruments under the Great Seal of the said Province, each such new county to consist of not less than six townships; and that when and so often as any such new county shall be formed and erected as aforesaid, the Governor, Lieutenant-Governor, or person administering the government of the said Province of *Lower Canada*, shall issue a writ for the election of one member to serve for the same in the Assembly; and that whensoever the said Governor, Lieutenant-Governor, or person administering the government as aforesaid, shall deem it expedient that any such new county, or

any county heretofore erected within the said Provinces of *Lower Canada*, and at present represented by only one member, shall be represented by two members, he shall in like manner issue writs for that purpose: Provided always, that no subdivision of any counties now erected or to be hereafter erected within either of the said Provinces, except as hereinbefore provided with respect to the said townships, shall extend or be construed to extend to increase the number of representatives for such counties: Provided also, that the number of representatives for each Province shall not exceed sixty.

continue until 1 July 1838, unless dissolved.

No Act to alter the number of Representatives to be passed, unless by Two-thirds of both Houses.

And be it further Enacted, That no act by which the number of representatives of either Province shall be altered, shall hereafter be passed by His Majesty, by and with the advice and consent of the said Legislative Council and Assembly, unless the same shall have been passed by two-thirds at least of the members present at the question for the second and third reading of the same in the said Legislative Council and Assembly respectively.

Provisions of 31 G. 3, respecting Elections, to remain in force.

And be it further Enacted, That all and every the provisions and regulations respecting the appointment and nomination, duties, privileges and liabilities of returning officers for either of the said Provinces respectively, and respecting the eligibility, qualification and disability of persons to sit as members in the said Assembly, or to vote on the election of such members, and respecting any oath to be taken by candidates or voters at such elections, and respecting all other proceedings at such elections, and respecting the times and places of holding such elections, as are contained in the said above-mentioned Act, passed in the thirty-first year aforesaid, except in so far as the said provisions and regulations are hereby in anywise altered, shall remain and continue in force in both of the said Provinces; and that all and every the provisions and regulations respecting the objects above enumerated, or any of them, which are contained in any Act or Acts of the provincial Legislatures, which are now in force in either of the said Provinces respectively, shall remain and continue in force within such Province, except as the same are hereby in anyways altered, until otherwise provided for by the joint Legislature.

Governor

And be it further Enacted, That when and so often hereafter

may summon a new Assembly.

as it may be necessary to summon and call together a new Assembly for the said two Provinces, it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, by an instrument under the said Great Seal of the *Canadas*, to summon and call together the said Assembly as hereinafter expressed and provided.

And shall issue Writs for the election of Members, as directed by 31 Geo. 3.

And be it further Enacted, That Writs for the election of members to serve in the said Assembly shall be issued by the Governor, Lieutenant-Governor, or person administering the government of the Province within which such members shall be chosen respectively, in the same manner and directed to the same officers and returnable within the same period, as in and by the said Act, made and passed in the thirty-first year aforesaid, is directed and provided.

Qualification in future to be real Property, to the value of £500 sterling.

And be it further Enacted, That on the first general election of members for the said Assembly, which shall take place from and after the passing of this Act, and on all subsequent elections, whether general or for particular places, in cases of vacancy, which shall be holden in either of the said Provinces, no person shall be capable of being elected, who shall not be legally possessed, to his own use and benefit, of lands and tenements within one or other of the said Provinces, of the value of Five hundred pounds sterling over and above all rents, charges and incumbrances which may affect the same, such lands and tenements being by him held in freehold, in fief, or in roture; and that every candidate at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, take an Oath in the following form, or to the following effect:—

Oath to that effect.

"I, *A. B.*, do Swear, That I am legally and *bonâ fide* possessed to my own use and benefit, of lands and tenements within the Province of *Canada*, of the value of sterling, over and above all rents, charges and incumbrances which may affect the same; and that the said lands and tenements are by me held in freehold, in fief, or in roture [*as the case may be*;] and that I have not obtained the same

"fraudulently, for the purpose of enabling me to be re-
"turned Member to the Assembly of the *Canadas*; and
"also that I am otherwise qualified, according to the
"provisions of law, to be elected and returned to serve as
"a Member thereof."

Provided always, That nothing in this Act contained shall be construed to affect any Act now in force in either of the said Provinces respectively relating to the qualification (other than as respects property) of any candidate or voter at elections.

Persons swearing falsely guilty of perjury.

And be it further Enacted, That if any person shall knowingly and wilfully take a false oath respecting his qualification, either as candidate or voter at any election as aforesaid, and shall thereof be lawfully convicted, such person shall be liable to the pains and penalties by law inflicted on persons guilty of wilful and corrupt perjury in the Province in which such false oaths shall have been taken.

Trials of contested Elections.

And be it further Enacted, That whenever hereafter any question shall arise touching the validity of the election or return of any person in either Province to serve in the Assembly, such question shall be tried in the Joint Assembly, according to the mode of proceeding now established by law in that Province in which the disputed election or return shall have been made, until a uniform course of proceeding shall be duly established for both Provinces.

Governor may summon Two Members of the Executive Council of each Province to the Assembly.

And be it further Enacted, That it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, if at any time he shall deem it expedient, to summon and authorize, by an instrument under his hand and seal, two members of the executive Council of each Province to sit in every Assembly, with power of debating therein, and with all other powers, privileges, and immunities of the members thereof, except that of voting.

Joint Legislature to be summoned not later than 1st September 1824, and once every twelve Months afterwards.

And be it further Enacted, That the said Legislative Council and Assembly shall be called together for the first time at some period not later than the first day of September, one thousand eight hundred and twenty-four, and once afterwards in every twelve calendar months; and that the said Governor-in-Chief, or

in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall and may convene the first and every other session of the said Legislative Council and Assembly, at such places within either Province, and at such times, under the restrictions aforesaid, as he shall judge most conducive to the general convenience, giving due and sufficient notice thereof, and shall have power to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise, whenever he shall deem it necessary or expedient.

Every future Assembly to continue five Years.

And be it further Enacted, That every Assembly hereafter to be summoned and chosen, shall continue for five years, from the day of the return of the writs for choosing the same, and no longer; subject, nevertheless, to be sooner prorogued or dissolved by the said Governor-in-Chief, or in case of his death or absence, by such other person, and in such order respectively as is hereinbefore directed.

Majority of Votes to decide.

And be it further Enacted, That all questions which shall arise in the said Legislative Council or Assembly, except in the cases herein otherwise provided, shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal, the Speaker of such Council or Assembly shall have a casting voice.

Oath prescribed by 31 G. 3, to be taken.

Provided always, and be it further Enacted, That no member either of the Legislative Council or Assembly shall be permitted to sit or vote therein, until he shall have taken and subscribed the oath prescribed for that purpose by the said Act passed in the thirty-first year aforesaid, before a person duly authorised to administer the same, as in and by the said Act is directed.

Royal Assent to be declared or withheld as prescribed by 31 G. 3.

And be it further Enacted, That any Bill which shall be passed by the Legislative Council and Assembly shall be presented for His Majesty's assent to the said Governor-in-Chief, or in case of his death or absence, to such other person, and in such order respectively, as is hereinbefore directed, who shall, according to his discretion, declare or withhold His Majesty's assent to such Bill, or reserve such Bill for the signification of His Majesty's pleasure thereon, subject always to the same provisions and regulations with respect to Bills which may either be

assented to, or from which His Majesty's assent may be withholden, or which may be reserved as aforesaid, as the case may be, as in and by the said Act, passed in the thirty-first year aforesaid, are contained and enacted with regard to such Bills respectively.

All Laws now in force to continue, except as hereby repealed or altered.

And be it further Enacted, That all laws, statutes, or ordinances which are in force at the time of passing this Act, within the said Provinces or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority, and effect in each of the said Provinces respectively as if this Act had not been made, except in as far as the same are repealed or varied by this Act, or in so far as the same shall or may be hereafter by virtue of and under the authority of this Act repealed or varied by His Majesty, his Heirs or Successors, by and with the advice and consent of the said Legislative Council and Assembly.

Privileges of Members to continue.

And be it further Enacted, That all rights, privileges, immunities, and advantages which are at present legally exercised and enjoyed by the members of the Assemblies of *Lower* and *Upper Canada* respectively, shall continue to be exercised and enjoyed by them as members of the said Assembly of the *Canadas*, in as full and as ample a manner as heretofore: Provided always, That no privilege of the said Legislative Council or of the said Assembly, shall extend or be construed to extend to authorise the imprisonment of any of His Majesty's subjects not being members of the said Legislative Council or of the said Assembly, or officers or servants of the said bodies respectively, until an Act be passed declaratory of the rights and privileges of the said bodies in this respect,

Henceforth all written Proceedings, and after 15 Years, all Debates to be in English alone.

And be it further Enacted, That from and after the passing of this Act, all written proceedings of what nature soever of the said Legislative Council and Assembly, or either of them, shall be in the *English* language and none other; and that at the end of the space of fifteen years from and after the passing of this Act, all debates in the said Legislative Council or in the said Assembly, shall be carried on in the *English* language and none other.

Persons pre-

And whereas by the said Act of the Imperial Parliament of

fessing the Religion of the Church of Rome, not to be affected.

Great Britain, made and passed in the fourteenth year aforesaid, intituled, "An Act for making more effectual provision for the government of the province of *Quebec*, in *North America*," it was, amongst other things, declared, That His Majesty's subjects, professing the religion of the church of *Rome*, of and in the said Province of *Quebec*, might have, hold and enjoy the free exercise of the said religion, subject to the King's supremacy as in the said Act mentioned, and that the clergy of the said church might hold, receive, and enjoy their accustomed dues and rights with respect to such persons only as should profess the said religion; Be it therefore further Enacted and Declared, that nothing in this Act contained, nor any Act to be passed by the said joint Legislature, nor any resolution or other proceeding of the said Legislative Council or Assembly, shall in anywise affect or be construed to affect the free exercise of the religion of the Church of *Rome* by His Majesty's subjects professing the same, within either of the said Provinces, but the same may continue to be exercised, and the clergy of the said church and the several curates of each respective parish of the said Province of *Lower Canada*, now performing the clerical duties thereof, or who shall hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor or Lieutenant-Governor, or persons administering the government of the said Province of *Lower Canada* for the time being, be thereto duly collated, appointed, or inducted, may continue to hold, receive, and enjoy their accustomed dues and rights in as full and ample manner, to all intents and purposes, as heretofore, and as is provided and declared by the said last-mentioned Act.

Certain provisions of 31 G. 3, to extend to Acts to be passed by the joint Legislature.

And be it further Enacted, That all the provisions, regulations, and restrictions made and imposed in and by the said Act, passed in the thirty-first year aforesaid, with respect to any Act or Acts containing any provisions of the nature therein particularly mentioned and specified, shall and the same are hereby declared to extend and apply to each and every Act which shall be passed by the said Legislative Council and Assembly, and which shall contain any provisions of the nature in and by the said last-mentioned Acts set forth and specified.

Accounts, &c.

And be it further Enacted, That all and every the accounts,

returns, papers, and documents, which by any Act now in force in either Province are directed to be laid before the Legislature thereof respectively, shall, under the penalties therein provided, be in like manner transmitted and laid before the Legislature of the *Canadas*, during the continuance of such Acts.

to be laid before the Legislature.

And be it further Enacted, That the officers and other persons receiving salaries or allowances in respect of services rendered by them in the Legislatures of their respective Provinces, shall continue to receive such salaries and allowances as heretofore, until otherwise provided for by any Act which shall be passed by His Majesty, His Heirs or Successors, with the advice and consent of the Legislative Council and Assembly of the *Canadas*.

Salaries of Officers of the Legislature to continue till otherwise provided for

APPENDIX (B.)

Examination of the Right Hon. ROBERT JOHN WILMOT HORTON, *a Member of the Committee.*

Query 1.—Are you of opinion that under the Act of 31 Geo. 3, c. 31, the Assembly of Lower Canada were legally entitled to appropriate the duties collected under the 14 Geo. 3, c. 88?—I am of opinion that they were not legally entitled, for the following reasons: first, there were two Acts passed in the year 1774, relating to the Government of Canada, the one the 14 Geo. 3, c. 83; the other the 14 Geo. 3, c. 88; the Act of the 31 Geo. 3, c. 31, commonly called the Quebec Act, specifically repeals *so much* of the Act of 14 Geo. 3, c. 83, as in any manner relates to the appointment of the Council for the affairs of the said Province of Quebec, &c.: it appears to me to be conclusive that that partial repeal involved the continuance in full force of the *remainder* of those Acts, the latter of which imposed the duties in question.

Secondly, the 46th clause of the 31 Geo. 3, c. 31, which is mainly founded on the 18 Geo. 3, c. 12, commonly called the Declaratory Act, enacts, "That nothing in this Act contained shall extend or be construed to extend to prevent or affect the execution of any law which *hath been* or shall at any time be made by His Majesty, his heirs or successors, and the Parliament of Great Britain, for establishing regulations or prohibitions, or for imposing, levying, or collecting duties for the regulation of navigation, or *for the regulation of the commerce* to be carried on between the said two provinces, or between either of the said provinces and any other part of His Majesty's dominions, or between either of the said provinces and any foreign country or state, or for appointing and directing the payment of drawbacks of such duties so imposed, or to give His Majesty, his heirs or successors,

any power or authority, by and with the advice and consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such law or laws, or any part thereof, or in any manner to obstruct the execution thereof."—A reference to the rates contained in the 14 Geo. 3, c. 88, will show that they *regulate the commerce* to be carried on between the colony and other parts of the world, according to the phrase employed in the 46th clause: they impose a duty of 3*d.* on every gallon of brandy and other spirits, of the manufacture of Great Britain; 6*d.* for every gallon of rum or spirits imported from any of His Majesty's sugar colonies in the West Indies; 9*d.* for every gallon of rum imported from other colonies in America; 1*s.* for every gallon of foreign brandy or other spirits, of foreign manufacture, imported or brought from Great Britain, and so on; thus presenting a graduated scale of duty, having a reference to the commercial interests of the country. If the Committee will then refer to s. 47, I think they will be convinced that it was intended to maintain this Act in force, and not to repeal it; the section runs thus—"Provided always and be it enacted by the authority aforesaid, that the net produce of all duties which shall be so imposed" (making no allusion whatever to the duties *which have been* so imposed) "shall at all times *hereafter* be applied to and for the use of each of the said provinces respectively, and in such manner only as shall be directed by any law or laws which may be made by His Majesty, his heirs or successors, by and with the advice and consent of the Legislative Council and Assembly of such province."

Thirdly, because if reference be made to the case of other colonies which possessed Legislatures at the period of passing the Declaratory Act, it is perfectly notorious that not a single year has elapsed since that Declaratory Act was passed, in which duties have not been levied, and even remitted to this country, and deposited in the Exchequer, *which have been raised under British Acts passed prior to the Declaratory Act.* I beg leave to call the attention of the Committee to the case of Jamaica. The Commissioners of Customs in Jamaica have annually remitted to this country, duties levied under the following Acts; I take the schedule as it appears in the year 1822: duties per Act 25 Ch. 2, 31*l.* 18*s.* 6*d.*;

ditto, 6 Geo. 2, and 4 Geo. 3, 3252*l.* 8*s.* 1¾*d.*; if the construction contended for by the Assembly of Lower Canada be legal, it is quite clear that all these duties have been illegally transmitted from the period of the Declaratory Act.

Fourthly, because Colonial Acts which were in force prior to the Declaratory Act, and which directed the appropriation of monies other than by the Legislature, *have still continued in force*, notwithstanding the Declaratory Act; this fact appears to me to afford by analogy a proof in defence of the construction for which I contend. I would call the attention of the Committee to the Bahama Act, passed in the 8 Geo. 2, for levying divers sums of money for the payment of officers' salaries, defraying the expense of holding Assemblies, and other contingent charges of Government; not only has this Act been in force since the period of the Declaratory Act, but the law officers of the Crown gave an opinion in February 1821, that as certain suspending Acts had terminated, under which this Act had been repealed, it must be considered to have revived, and that His Majesty might apply the monies levied under it, without the intervention of the House of Assembly, and without any other specific appropriation by the Legislature of the Bahamas. For these reasons I am decidedly of opinion, that the construction contended for by the Colonial Assembly of Canada, namely, that they have a legal right to the appropriation of the revenue raised under the 14 Geo. 3, is a construction not to be maintained.

I would now beg further to explain to the Committee, that the disputes arising between the Executive Government and the Assembly, have mainly arisen out of this construction. From the year 1818 up to the year 1825, difficulties constantly occurred in consequence of the maintenance of that opinion by the Assembly; but in 1825 an Act was passed during the administration of Sir Francis Burton, (5 Geo. 3, c. 27,) in which is the following passage:—"Whereas, by the message of his Excellency the Lieutenant-Governor, bearing date the 18th of February 1825, laid before both Houses of the Legislature, it appears *that the funds already appropriated by law* are not adequate to defray the whole of the expenses of your Majesty's Civil Government in this province, and of the administration of justice and other expenses

mentioned in the said message: and whereas it is expedient to make *further provision* towards defraying the same," &c. It is evident here, that the validity of the 14 Geo. 3 is admitted under the phraseology of this Act, it is admitted that the funds raised under it are *legally appropriated;* and under this Act of the local government no difficulty whatever existed, except that they practically reduced the estimate of the charges placed by the Executive Government upon the Crown revenue, by diminishing the proposed grant of 65,002*l.* 1*s.* 8*d.*, to a sum not exceeding 61,611*l.* 7*s.* 11*d.*, thereby leaving a deficiency of 3390*l.* 13*s.* 9*d.*; this sum of 3390*l.* 13*s.* 9*d.* had reference to certain items specifically objected to by the Assembly, which items had been specially charged upon the Crown revenue; but as the Assembly voted this sum collectively, and not by items, it was necessarily left to the discretion of the Lieutenant-Governor to deal with that deficiency as he might think best. The simple fact being, that under that Act 3390*l.* 13*s.* 9*d.*, deemed to be necessary for the public service, as would appear by the Lieutenant Governor's estimate, was not voted by the Assembly. With respect to the manner in which that deficiency was practically met, the Secretary of State (Lord Bathurst) abolished some of the offices included in this 3390*l.*, and transferred others to the territorial revenues of the Crown, over which the Assembly did not so directly, at least, claim to have any jurisdiction; it is perfectly true that, in the first instance, Lord Bathurst remonstrated against the conduct of the Lieutenant-Governor in having sanctioned this Act; but it was under the impression that the words of the Act *did not* maintain the integrity of the Crown revenue, and consequently that it was contrary to the Royal instructions. In the succeeding year 1826, the Assembly, with a view of obviating the construction of the Act of 1825, as sanctioning the integrity of the Crown revenue, passed the following resolutions before they commenced the vote of supply for that year:—"Resolved, first, That the appropriation of any sums of money already levied, or which hereafter may be levied on His Majesty's subjects in this province, otherwise than such application is or may be directed to be made by the express provisions of law, is a breach of the privileges of this House, and subversive of the government of this province as

established by law. Second, That no law imposing duties or taxes on His Majesty's subjects in this province, providing funds for the defraying the expenses of His Majesty's Civil Government, and those of the administration of justice, or of the Legislature in this province, can be held to confer upon any person a power or right of applying the monies thence arising, or making a special appropriation and distribution thereof, without the consent and authority of the Legislature. Third, That the sums granted and appropriated for any special service should be applied by the executive power only to defray the expenses of that service, and that the application of any surplus of funds to uses for which they were not appropriated is a misapplication of the public money, a breach of public trust, a violation of the rights and privileges of this House, and subversive of the government of this province as established by law. Fourth, that this House will hold personally responsible His Majesty's receiver-general of this province, and every other person or persons concerned, for all monies levied on His Majesty's subjects in this province, which may have legally come into his or their hands, and been paid over by him or them, under any authority whatsoever, unless such payments be or shall be authorized by an express provision of law." I am not enabled to state to the Committee whether the bill of 1826 was *verbatim* the same as the Act of 1825, because the bills are not sent over to this country; but that bill was amended by the Legislative Council for the purpose of unequivocally maintaining in its terms the integrity of the Crown revenue raised under the 14 Geo. 3; the consequence of that amendment was, that the Assembly refused to proceed with it upon its return from the Upper House, and the supplies were in consequence not voted. I must not omit to represent most distinctly to the Committee, first, that the manner in which the proceeds of the 14 Geo. 3 were disposed of, were uniformly laid before the Assembly, who had consequently the power to remonstrate against any of the items included therein, or, by diminishing the general supply, practically to affect the appropriation of that revenue; but the Assembly were determined to do nothing less than contend for the legality of the appropriation of that revenue by themselves, and that construction was considered as one to which His Majesty's Government, con-

sistently with the maintenance of the interests of the Crown, could not consent.

I have thus endeavoured to afford accurate information to the Committee upon this point, and beg to remind them that there never was an indisposition to give the Assembly the absolute appropriation of this revenue, provided they would consent to vote the existing Civil List for a term of years, or for the period of the King's life; and it was considered in the state of collision of feeling between the Assembly, as those representing the French interest, and the Legislative Council as representing the English interest, that if the Civil Government was dependent annually upon a vote of the Legislature for its support, there was little chance of the public service being carried on in that colony. It appears to me impossible for any person to form a just view of the case in dispute between the Colony and the Executive Government, without ascertaining whether the charges which were made by the Executive Government upon the Crown revenue, were such as ought, or ought not, in fairness to have received the sanction and approbation of the Colonial Assembly.

Query 2.—On what ground is it stated that in the 11 years that elapsed between 1773 and 1784 the English law prevailed in the townships of Lower Canada?—A Royal Proclamation was issued in 1763, of which the preamble was in the following words:—"Whereas We have taken into Our royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late definitive treaty of peace, concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation, we have thought fit to issue this our royal proclamation." In the body of the proclamation there is the following passage:—"And whereas it will greatly contribute to the speedy settling our said new governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants thereof, we have thought fit to publish and declare by this our proclamation, that we

have in the letters patent under our great seal of Great Britain, by which the said governments are constituted, given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government; and we have also given power to the said governors, with the consent of our said Councils and the Representatives of the people so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, *as near as may be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies;* and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection *for the enjoyment of the benefit of the laws of our realm of England;* for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said Councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining *all causes as well criminal as civil*, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us in our Privy Council."

Query 3.—In what respect do succeeding Acts of Parliament affect the proclamation of 1763?—The Act of the 14 Geo. 3, c. 83, was intituled, "An Act for the making more effectual provision for the Goverment of the Province of Quebec in North America." Under the 4th clause of that Act all former provisions made for that province were to be null and void after the 1st of May, 1775; and with reference to the proclamation of 1763, that clause proceeds as follows:—"And whereas the provisions made

by the said proclamation in respect to the civil government of the said province of Quebec, &c. &c., have been found upon experience to be inapplicable to the state and circumstances of the said province, &c. &c.; Be it Enacted, That the said proclamation, so far as the same relates to the said province of Quebec, and the commission under the authority whereof the government of the said province is at present administered, and all ordinance and ordinances, &c. &c., and all commissions, &c. &c., be hereby revoked, annulled, and made void." The clauses of the Act, from four to nine, contain provisions affecting the French Canadians; and then the ninth clause is as follows:—"Provided always, that nothing in this Act contained shall extend or be construed to extend to any lands that have been granted by His Majesty or shall hereafter be granted by His Majesty, his heirs and successors, to be holden in free and common soccage." It appears to me, therefore, that as far as affects the English population resident in the townships, the proclamation of 1763 was to be in full force as respected them. In the Act of the 31 Geo. 3, c. 31, commonly called the Quebec Act, the Act of the 14 Geo. 3, c. 83, just quoted, was only repealed as far as relates to the appointment of a council for Quebec, consequently the rest of its provisions must be considered to remain in force; and the 43rd clause of that Act is as follows:—"And be it further enacted by the authority aforesaid, that all lands which shall be hereafter granted within the said province of Upper Canada shall be granted in free and common soccage in like manner as lands are now holden in free and common soccage in that part of Great Britain called England; and that in every case where lands shall be hereafter granted within the said province of Lower Canada, and where the grantee thereof shall desire the same to be granted in free and common soccage, the same shall be so granted." The concluding part of this clause provides for any alteration to be made by local laws in the Canadas, and proceeds as follows:—"But subject nevertheless to such alterations with respect to the nature and consequences of such tenure of free and common soccage as may be established by any law or laws which may be made by His Majesty, his heirs or suc-

cessors, by and with the advice and consent of the Legislative Council and Assembly of the Province." The next reference to this subject which appears in legislation is in the eighth clause of the 6 Geo. 4, c. 69, commonly called the Canada Tenures Act, which declares that lands holden in free and common soccage in Lower Canada are to be subject to the laws of England, as it appears to me in the strictest accordance with the 43rd clause of the 31st of the late King, when that clause is taken with reference to preceding legislation; which clause as already cited provides absolutely that grants in Upper Canada shall be made in free and common soccage; but with respect to Lower Canada, there was a power to the Local Legislature to modify that enactment if it should be deemed expedient by the Legislature and by the Crown.

Query 4.—What is the substance of the Act which has provided for an increase in the number of representatives in the Legislative Assembly of Upper Canada?—The preamble of this Act, passed 7th of March, 1820, is to the following effect:—"Whereas from the rapid increase of the population of this province, the representation thereof in the Commons House of Assembly is deemed too limited, so much of the several laws now in force as regulate the number of representatives to serve in the Provincial Parliament are repealed." It then proceeds to enact that counties containing 1000 inhabitants should be represented by one member; when they contained 4000 inhabitants, by two members; that certain towns, when they contained 1000 souls, should be represented by one member; that the population should be ascertained by the returns of the several town-clerks; that whenever a university should be established in the province, it should be represented by one member. The Governor to issue writs of election, as provided by the 31st of the late King. The Act not to lessen the number of any members now returned for any county, nor to make it necessary to issue any new writs of election on account of any increase of inhabitants since the last election. Counties containing less than 1000 souls to be attached to the next adjoining county, having the smallest number of inhabitants. No person qualified to vote in a town to be allowed

to vote for a county in respect of the same property. Inhabitants of towns sending a member not to be included among the inhabitants of counties, for the purposes of this Act.

Query 5.—What was the substance of the bill for uniting the Legislatures of the provinces of Upper and Lower Canada, which was brought in and withdrawn in the session of 1822?—So much of the 31 Geo. 3, c. 31, was repealed, as provides a Legislature for each of the provinces of Upper and Lower Canada, henceforth to be one joint legislative Council, and one joint Assembly for both provinces. The joint Legislative Council was to consist of the existing members of both Councils, with a power for His Majesty from time to time to summon such other persons or person as His Majesty, his heirs and successors, should think fit. Such summons to be carried into effect under the enactment of the 31 Geo. 3. The Governor was to have the power of appointing and removing the speaker of the Legislative Council; the joint Assembly was to consist of the present members of the assemblies of Upper and Lower Canada, and to continue till the 1st of July, 1824, unless sooner dissolved. The Act of Upper Canada of the 6 Geo. 4 was to continue in force, and to be applied, subject to any alteration in the Union Bill, to the representation of the said province of Upper Canada in the joint Assembly, in like manner as it had been applicable to the special representation of Upper Canada prior to the passing of the Act. The Governor of Lower Canada was authorized to erect new counties out of the townships, such counties to be represented in the Assembly, or any old county now returning one member to be represented by two members. It was provided at the same time that no subdivision of any counties now erected, or to be hereafter erected within either of the said provinces, except as hereinbefore provided with respect to the townships, shall extend or be construed to extend to increase the number of representatives for such counties. It was also provided that the number of representatives for each province should not exceed 60. No Act to alter the number of representatives was to be passed unless sanctioned by a majority of two-thirds of the Legislative Assembly, as well as the Legislative Council. The provisions of the 31 Geo. 3, respecting elections, were to remain in force.

The qualification for a member was to be of the value of 500*l.* sterling of real property, and an oath was prescribed to ensure that qualification, and persons swearing falsely to be guilty of perjury. The trials of contested elections were to be the same as under the 31st of the King. The Governor was to have the power of summoning two members of the Executive Council in each province to the Assembly, who were to sit with power of debating therein, and with all other powers and privileges and immunities, except that of voting. The united Legislature was to meet once in every twelve months, and to continue for five years, till the period of a general election: majority of votes to decide. The oaths prescribed by the 31 Geo. 3, for the members of the Council and Assembly, to be taken; the declaration of the Royal Assent to be regulated by the enactments of the 31 Geo. 3; all laws in force at the time of the passing of the Act within the said provinces, or either of them, or any part thereof, to be unchanged, and the privileges of members to continue precisely the same. It was further enacted, that from the period of the passing of this Act all written proceedings whatever should be in the English language, and at the end of 15 years after the passing of the Act, all debates in either House to be carried on in English, and in no other language; that nothing in this Act, nor any act to be passed by the joint Legislature, nor any resolution or other proceeding of the Legislative Council or Assembly, was to affect or be construed to affect the free exercise of the religion of the Church of Rome, or to prejudice such accustomed dues and rights as the clergy of the said church might hold, receive, and enjoy, subject to the King's supremacy as recognised in the Act of the 31 Geo. 3, and the clergy and curates now performing clerical duties, or who hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor, &c., should be duly collated, appointed, or inducted to any parish, were to continue to hold, receive, and enjoy their accustomed fees and rights as fully as they were entitled to do under the Act of the 31st of the King. All the remaining provisions of the Act of the 31st of the King were to be in force.

Query 6.—Were the objections that were made to that bill

chiefly to the principles of the bill, or to any part of the details? —There were objections made from both the Canadas, but more especially from Lower Canada, against the principles of the bill; there were also objections made to some of the details.

Query 7.—Will you have the goodness to point out to the Committee what parts were objected to?—It was objected that the principle prescribed for the representation would necessarily give a greater proportion of representatives to Upper Canada, inasmuch as the Act for increasing the representation of the commons of that province, according to the scale of population, was to be still in force; whereas no Act existed in Lower Canada to the same effect; consequently the enactment of any legislation to that effect in Lower Canada would depend upon the united sanction of the two Assemblies after the period of union. There was an objection also made to the qualifications, and to the introduction of two members of the Executive Council, as debaters and not as voters; but the enactment which prescribed that all written proceedings were immediately to be in the English language, and that after 15 years all debates were to be in English, was considered as affording a pretty conclusive indication that it was intended progressively to render the united province English as to its institutions.

Query 8.—Have you any observation to make upon that provision of the bill?—It is impossible to deny that the intention of that bill was to realize the expression employed by Mr. Pitt in 1791, namely to assimilate the Canadians to the language, manners, habits, and above all the laws and institutions of Great Britain.

Query 9.—Did not Mr. Pitt accompany that declaration by saying that he only looked forward to such an assimilation taking place, if it could take place with the free will of the French Canadians, and was not the very ground on which he separated the colony into two provinces in order to ensure the French Canadians from the possibility of the Government attempting to produce such an assimilation without their entire assent and concurrence?—The Union Bill was considered to be necessary in consequence of the inherent defects in the bill of 1791, which placed the two provinces in a state of perpetual collision, from which no escape was anticipated at that time, except through the medium of a legisla-

tive union, and consequently, whatever abstract objections there might have been to that measure, it was considered as one of permanent public necessity.

Query 10.—But the Committee are not to understand that you represent Mr. Pitt as having desired to assimilate the laws and habits of the two populations in Canada upon any other ground than the entire concurrence of the French population in such assimilation?—I only mean to imply that Mr. Pitt contemplated from the legislation of 1791 that such assimilation would take place. I think the Union Bill of 1822 was defective in not more explicitly securing the rights, privileges, immunities and advantages enjoyed by the French population under their own laws, and making such laws so far permanent as to be incapable of repeal by the operation of this united Legislature.

Query 11.—Do you think that any bill could now be framed, the object of which should be uniting the two provinces, which could be made free from objection by the inhabitants of both provinces?—I am satisfied that no bill could be made which would be free from objection, but I am convinced that that bill of 1822 might be so materially improved as to remove a great part of the objections which were not unjustly preferred against it, and I do not myself see any alternative between the proposition of transferring to the province of Upper Canada a port which shall enable her to maintain her communication with the sea, and thereby effect her independence of the Lower Province, with respect to revenue arising from duties on goods imported seawards, or, on the other hand, the carrying into effect the provisions of a legislative union.

Query 12.—Could a port be given to Upper Canada by any other means than by annexing Montreal to that province?—I am not aware of any other geographical facility of accomplishing that object.

Query 13.—Do you think that the objections to the latter arrangement on the part of the Lower Canadians would not be almost as strong as to an incorporating union of the two provinces?—I entertain no doubt that very strong objections would be made by the Lower Canadians against such a proposal, but I repeat, that under the relative circumstances of the two provinces, and the bounden duty of the mother country to act justly between them,

I do not myself perceive any other than these alternatives. I cannot, however, avoid remarking, that should considerations of mutual defence, and a sense of common interest, create a growing opinion in favour of a legislative union in the two provinces, there does not appear to me to be any conclusive mode of adjusting their interests, with respect to the appropriation of their common revenue, other than by an identification of interests, involved in the measure of union; but, at the same time, of a union which should guarantee to the French population their laws and institutions in the seigneuries, to the extent of preventing the combined Legislature from voting away those laws and institutions, and at the same time should reserve space enough in the unsettled part of the province, so as to allow the French population to spread itself within the sphere of the operation of French law.

Query 14.—Can the difficulty which arises in adjusting, collecting, and distributing the customs revenue of goods imported into the St. Lawrence, in your opinion, be better provided for than by the provisions which are contained in the Canada Trade Act?—I do not imagine that, under the present circumstances of the two provinces, any mode can be suggested more likely to accomplish this object than that which is prescribed under the provisions of that Act.

Query 15.—Several witnesses have stated to the Committee that, in their opinion, a system of duty and drawback might be adopted, and that a system of warehousing, in Lower Canada, goods which should be afterwards imported into Upper Canada and pay duty there might be adopted, and that either of them would be preferable to the course which has been enacted by law; were those modes under the consideration of the Colonial Department at the time that that measure was decided upon?—A variety of suggestions were made to the Colonial Department at that period, and it was found then, as I believe it will be found now, that the Lower Canadians were disposed to think that those facilities might exist, and that the Upper Canadians were almost unanimously of a contrary opinion.

Query 16.—Mr. Ellice in his evidence alludes to certain obstructions which prevented the provisions of the Act called the Canada Tenures Act from being carried into effect, and he refers

to instructions which were sent to the local government to carry into effect the provisions of the Act of 1822; can you inform the Committee of the nature of those instructions?—The Executive Council considered the question only in the abstract, and simply with reference to an equitable valuation of the rights of the Crown, which the seigneurs might wish to redeem; but the great object of the clause was, not only to relieve the seigneurs from the feudal dues payable to the Crown, but also to enable them to free their censitaires, or sub-tenants, and thereby to introduce generally a system of tenure more favourable to agriculture and to the general improvement of the province. Lord Dalhousie was therefore instructed to give every encouragement to the seigneurs to free those who hold under them, and to make it known that in the event of any seigneur distinctly engaging to free his censitaire on a principle of equitable composition whenever any of them may demand it, the Crown will in that instance free the seigneur at the rate of five per cent., or in other words, one-twentieth instead of one-fifth of the value.

Query 17.—The Committee have been informed that a large portion of the land in Lower Canada has been granted in such large masses to persons who are not resident, and can hardly be found; have the goodness to state what, in your opinion, would be the best mode of removing the difficulties which now retard the cultivation of those lands?—I should be prepared to concur with Mr. Ellice in opinion, that if a taxation of the waste lands could be carried into effect, it might be as convenient a mode of remedying that defect as the remedy of escheats; but, at the same time, I do not at all concur with Mr. Ellice in his opinion of the practical difficulties of carrying a practical system of escheat into effect. It has been practically carried into effect in New Brunswick to the extent of a million of acres; and I see no reason why, under proper regulations, it might not be equally carried into effect in Lower Canada. It would be necessary for this purpose that time should be given to enable parties to execute those stipulations of settlement duty, which hitherto they have omitted to execute; as it would be unfair to visit upon them suddenly the consequences of that omission which has been tacitly submitted to by the Executive Government. There is one mode by which

this principle of escheat may be carried into effect, which is, the forfeiting a certain portion of the land itself to the Government as a penalty for non-improvement, such forfeiture to take place periodically until the whole would be forfeited, supposing the party not to carry the stipulated improvements into effect. Instructions were sent out from Lord Bathurst, of the date of

1826, for the purpose of forming a commission of escheat, and of considering the best practical remedy of applying the principle; but nothing is more certain than that, unless some practical remedy be supplied, either of taxation or of escheat, the granted lands, which are now in a state of waste in Lower Canada, must effectually prevent all improvements upon an extended scale in that province.

Query 18.—Would the operation of a tax on land remaining waste conflict in any way with the system of escheat that is directed to be carried into operation?—I should think the principle of escheat might be carried into effect by the Crown simultaneously with any tax which the Legislature might impose upon uncultivated land. Lord Dalhousie states, in a letter addressed to Lord Bathurst, of the 5th of April 1825, that with respect to escheat and forfeiture of grants of land for non-performance of conditions of settlement stipulated in the letters patent, he has to observe, that of two and a half millions of acres granted in this manner in Lower Canada, not less than seven-eighths remain uncultivated, and therefore liable to resumption by the Crown. It is supposed that six millions of acres held under seigneural tenure are under similar predicament, but with respect to this description of lands it is doubtful how far the Crown will have a right to resume them if the proposed conversion of tenure should take place to any extent. Lord Dalhousie adverts to the expediency as well as the right of recovering such immense tracts of land for the settlement of emigrants. He adds, the obsolete course of proceeding which the ancient law of Canada points out for the resumption, both of soccage and seigneural lands, is so incumbered with difficulties, and so inapplicable to the present state of the province, particularly with regard to grants in the townships, that it is next to impossible for the Crown to resume its just rights. In consequence of this suggestion of Lord Dalhousie, that clause was

introduced into the Canada Tenures Act which provides for the formation of courts of escheat.

Query 19.—What steps have been taken by the Colonial Office to remedy this evil?—In the 6th Geo. IV. c. 56, commonly called the Canada Tenures Act, the 10th clause provides, that courts of escheat shall be constituted in the province of Lower Canada to try forfeitures of uncultivated lands liable to escheat to the Crown. In the year 1826, Lord Bathurst sent instructions to Lord Dalhousie to appoint one of the inferior judges to act as commissioner of the court of escheats under the clause of the Act of Parliament. Lord Dalhousie replied, that the judge had not time to execute the duties, and that some other person must be appointed, upon which Mr. Huskisson wrote out instructions to him, authorizing him to appoint a person competent to perform the duty. It is to be recollected that no fund whatever exists, unless voted by Parliament, for carrying into effect this principle of escheat. The difficulties attached to carrying into effect a satisfactory principle of escheat were considered so great, that when Colonel Cockburn was sent out inspector and commissioner, he received separate instructions to communicate with the governors of all our North American Colonies, and especially with Lord Dalhousie, for the purpose of reporting to the Government at home the best practical method of carrying the system of escheat into effect at the earliest possible period. I beg to express my opinion, that unless a system of escheat be carried completely into effect, there can be no possible improvement for those colonies, and that I have every reason to believe that the information in the hands of Government is such as will enable them at an early period to execute such a system.

Query 20.—Is the system upon which land is now granted in Canada such as to prevent the probability of a recurrence of this inconvenience?—Entirely; but a statement of the system upon which it is granted may be given in to the Committee. The system upon which it is now granted is, it is granted precisely in proportion to the capital which the individual has to lay out upon it.

Query 21.—Is adequate security insisted upon for the expenditure of capital upon the land?—I consider that such security is involved in the prescribed regulations.

Query 22.—The Committee were informed by Mr. Ellice, that he had found great difficulty in effecting a commutation of the tenure of his land from seigneury into free and common soccage, under the provisions of the Act for that purpose; will you state in what mode the difficulties may be removed?—The first arrangement that was made by Government, with respect to the change of the tenure from the feudal tenure to free and common soccage only, provided for the release of the immediate tenant under the Crown. The consequence was, that the purposes of that change of tenure were not carried into effect. The seigneur became released from his engagement to the Crown, but was not compellable to release his sub-tenant from similar engagements. The Canada Tenures Act provided, that in cases where the Crown thought fit to remit its rights to the seigneur for a consideration of five per cent. on the estimated value, that the seigneur on his part should be compelled by law to submit to arbitration as between himself and his sub-tenant, so that the sub-tenant could claim from him the same change which he had effected in his own case with the Crown.

Query 23.—What are the difficulties which prevent that arrangement being carried into effect?—I consider the difficulties that interpose upon that point are the entire indisposition of the French population to avail themselves of this permission, and in point of fact it is a permission which is only available on the part of the English.

But Mr. Ellice, who was very anxious to avail himself of it, found so many difficulties in his way, that he was obliged to give it up; and one of the difficulties that he states is, the very large fine of one-fifth of the value demanded by the Crown;—The original claim of the Crown was one-fifth, but the Crown, in consideration of the advantage which was expected to accrue from a change of tenure, remitted that one-fifth or 20 per cent. for five per cent.

Query 24.—Do you think it advisable, seeing the difficulties that still exists, for the Crown to contract its demands still more?—If the seigneur would contract his demands upon his sub-tenant at the same time that the Crown contract its demands with respect to himself, I might be disposed to answer that I think it would be very desirable; but I do not understand upon what principle of

fairness it is, that while the Crown on the one hand is to release the seigneur, the seigneur is to maintain his full rights with respect to his sub-tenant. It was considered at the time, by all the information which could be obtained by Government, that a much greater sacrifice was made by the Crown to the seigneur than the seigneur made to his sub-tenant; and it did not follow, that supposing the Crown had remitted altogether its demand, that that would have facilitated in any degree the conversion of the tenure on the part of the seigneur with respect to his sub-tenant.

Query 25.—Do you think it advisable for the Crown still to contract its demands in order to facilitate the improvement of the colony by the change of tenure?—If it were proved by presumptive evidence that the effect of a contraction of the demands of the Crown would be practically to effect the release of this sort of property, in that case I should say that it would be worth while for the Crown to make a sacrifice; but it was considered that the arrangement was as fair and equitable, and as likely to produce the effect, as any arrangement could be: it is impossible not to perceive that if this change of tenure were to take place extensively in the seigneuries, and the consequence of it were to be to introduce the English law into those lands of which the tenure was commuted, it would produce a great deal of confusion in having property intermixed alternately as it were, and having a different law applied to it.

Query 26.—Do you think that any instructions could be given to make this change of tenure more practicable?—I certainly am not aware that instructions could be given to make it more practicable.

Query 27.—Could the Act be so amended as to facilitate the exchange?—I have only to repeat, that I consider that the advantage of this permission will only be taken by the English possessors of property within the seigneuries; and I do not imagine that any greater facilities can be given than what are now given under the instructions, as combined with the provisions of the Act.

Query 28.—Mr. Ellice mentioned that an English receiver is appointed for the province, insufficient security being taken in England; what regulations do you think may be applied to remedy this for the future?—The appointment of the receiver rests exclusively with the Treasury, and consequently I have no

detailed knowledge upon the subject, which would enable me to give any specific suggestions upon it. At the same time, I would observe that, in my opinion, it is expedient that the most unqualified publicity should be given, both in the colonies and in the mother country, to all pecuniary accounts, appropriations, and matters of finance. If this principle be fairly acted upon, it will, in my judgment, effectually prevent for the future all serious difficulty upon such subjects.

Query 29.—Mr. Ellice stated that the Governor of Lower Canada has been instructed to remedy the difficulty arising from the Assembly not voting supplies by his own warrants on the receiver, to whom the taxes are paid, under the provisions of the Canada Trade Act; have you any information to give the Committee upon that point?—The Governor did not receive instructions to appropriate any duties received under the Canada Trade Act; but under the emergency in which he has been not unfrequently placed, from the total cessation of all supplies, to carry on the government of the colony, he has drawn upon the unappropriated revenue, and such a proceeding is necessarily to be justified only from the extreme difficulty and embarrassment of his situation; the discretion which he has been compelled to exercise on such occasions has received the sanction of the Secretaries of State.

Query 30.—Will you have the goodness to state to the Committee, the circumstances that attended the introduction of the Alien Bill?—The object of the Upper Province, in desiring that the Alien Bill should be passed, was for the purpose of enabling aliens (in the strict sense of the term) to sit in the Legislature, and of quieting titles; no person could be legally entitled to the possession of land who was not a natural born subject, or who had not taken the oath of allegiance, and there were a great many persons who were not qualified under those restrictions.

Query 31.—Are you aware what proportion of the population of Upper Canada were so situated? A very considerable proportion of the population of Upper Canada were subject to this restriction; and it was necessary to have an Act passed in this country, in the first instance, to give effect to any local Act that might be passed in the province for remedying this inconvenience respecting elections.

With respect to the provisions of the local Act, which the Lieutenant-Governor in Upper Canada was directed to have introduced into the Assembly, its provisions were framed with the anxious desire to produce a measure of entire conciliation; and with respect to the conduct of the Colonial Department, it is necessary to mention that these instructions, which Lord Bathurst sent out to the colony for the passing of a local Bill, and which excited dissatisfaction, were regulations which *had received* the approbation of a member of the Legislature, who was over in this country more or less in the character of an agent for the province, with respect to certain grievances complained of. When those objections which were unexpectedly found to exist in the Legislature were made known to the Colonial Department, Lord Goderich sent out for instructions, upon which a bill was brought in, which has finally settled the question.

Query 32.—Were there any essential differences between the bill as proposed by Lord Bathurst, and that which was proposed by Lord Goderich, and accepted in Canada?—Undoubtedly; the principal distinction was this, that by the bill suggested by Lord Bathurst, all parties, however long they might have been resident, were required to resort to the same means of establishing their titles as those who were comparatively late residents; and the distinction taken by Lord Goderich was to put a limitation to the time for which this was necessary, and to consider possession prior to the year 1820 as itself constituting a title; but I repeat that it was not expected that any reclamation would have been made by the province against the absence of such limitation, or against the appointment of a registry, which was also made a subject of complaint.

Query 33.—Do not you consider the Colonial Office as responsible for any line of policy long continued by any Governor of a colony?—Undoubtedly; in cases which can be characterized as involving a line of policy.

Query 34.—With a view to judge what measures should be adopted by the Government, is it not necessary that the Colonial Office should be well aware of everything which passes between the Assembly of the province and the Governor?—It certainly is; and for that purpose the Journals of the Assembly are transmitted, accompanied by such comments as the Governor may think right

to add; but it does not follow that bills rejected by the Legislative Council should necessarily be made matter of observation.

Query 35.—Are the measures that have been taken for disposing of the crown reserves such as in your opinion are likely to effect the object that is desired?—I differ very much in opinion from Mr. Ellice with respect to the course that has been taken by the Government for disposing of the crown and clergy reserves to the Canada Company; he states that "an attempt was made by the Government to dispose of all this property to the Canada Company, but the church, always careful of their interest, did not approve of the price awarded by the commissioners, and which was in fact greatly exceeding its present value, and that chance of removing part of that nuisance has passed away, and it is impossible to avoid observing on the vacillating policy of the Colonial Office, which did not insist upon the arrangement being carried through." The principle upon which those lands were disposed of to the commissioners was a principle of general average, and the church, who were bound to consult their own legal rights, complained, as I consider justly, that whereas the clergy reserves were the more valuable lands, the average that was taken upon their lands necessarily gave per acre a less amount to them than they would have done if the clergy reserves had been taken specially.

Query 36.—Is there any reason to believe that the clergy reserves are more valuable per acre than the crown reserves?—All the reports that have been made to the Colonial Department go to prove that the clergy reserves, which always have been most carefully selected, are in fact more valuable than the crown lands.

Query 37.—In the laying out of a township who has the selection of the clergy reserves?—The Governor and Council. It is necessary to observe, that the seventh appropriated to the clergy is appropriated by a statute; the seventh appropriated to the Crown is merely at the discretion of the Crown.

Query 38.—In your opinion will the steps that have been taken to provide for the alienation of the clergy reserves be sufficient for that purpose?—The Committee are aware that a bill has passed enabling the Governor and Council in Upper Canada to sell 100,000 acres of clergy reserves every year, in my opinion that bill

is insufficient to effect the remedy which is so imperiously called for, because I think it would be extremely expedient to allow portions of the clergy reserves to be sold for the purpose of giving value to the remainder for the purpose of making roads, and performing settlement duties, and preparing them for cultivation, and I am of opinion that if those duties were done, and the clergy reserves improved to a certain extent, there would be no difficulty in leasing them on long leases, so as to make them productive at a much earlier period than might be expected. The proceeds of the sale of those reserves, as directed by statute, are to be impounded, and the rents and profits applied to such purposes as the Act of the 31st Geo. 3 directed, whatever those directions may be; but I am alluding to an absolute alienation of part of those reserves, for the purpose of applying the money for which those reserves are sold towards the improvement of the remainder, thereby making that remainder more valuable than the whole was prior to such alienation.

Query 39.—Is there anything in the Act of 1791 that appears to contemplate the expenditure of a sum of money upon those reserves for the purpose of improving them?—There does not appear to be the slightest allusion to the necessity of capital being laid out upon them before they could be made productive. It is evident that the object of those who framed the Act of 1791, as well as the regulation respecting the crown reserves, was founded upon the expectation that civilization would surround those waste lands, and give value to them in consequence of that circumstance, whereas the actual effect has been, that the existence of those reserves has prevented that very civilization from taking place.

Query 40.—It appears that out of the crown lands granted to the Canada Company, a reservation of 750*l.* a-year has been awarded for the Scotch Church, with what view was that award made?—It was considered highly expedient that the Scotch Church should have a provision, and whatever might be the adjudication with respect to the clergy reserves, it was quite evident that even if the principle of dividing the profits of those reserves between the two churches had been adopted, it would have yielded only 200*l.* per annum to the Scotch Church, which would be insufficient to meet the demands for their pastors, and consequently the Secretary of State recom-

mended the appropriation of a part of the proceeds of the payments of the Canada Company to the payment of the Scotch clergy.

Query 41.—How long is that 750*l.* to be continued to the Presbyterian Church?—The 750*l.* is necessarily at pleasure; but it is to continue as long as the payments are made from the Canada Company, which involved a period of 15 years absolutely, and a probability of a much longer period. Mr. Ellice observes, that "the clergy reserves are either kept in a state of wilderness, no person being liable for road duties through them, and the industrious settler being exposed to all the inconvenience of large tracts of forest intervening between his settlement and a market, or persons have occupied the more improved and accessible parts of them without title." I am of opinion that much of this inconvenience, if not all, would be removed by the principle of alienating a portion of the clergy reserves, for the purpose of applying the proceeds of them for the formation of roads; and in the general execution of what are called settlement duties; and that the effect of this would be, not only to improve the general condition of the province, but to make, as I have already observed, the remaining part of those reserves immeasurably more valuable than they are in their present state.

Query 42.—What has been the method of disposing of the crown reserves in all those districts?—It is perhaps unnecessary to remark that the Crown, having the undisputed appropriation of the six-sevenths, after the substraction of one-seventh for the purposes of the clergy, there could be no motive in separating one-seventh from the remainder, except a motive founded upon the expectation already adverted to, that some peculiar value was to attach to this reservation. In consequence of the settlement of the surrounding country, and the quantity of ungranted land in Upper Canada having been so great, it has never been necessary for the purpose of satisfying the demands of settlers to appropriate those crown reserves; and therefore they have remained upon the same principle as the clergy reserves, practical nuisances in the province.

Query 43.—Has the attention you have paid to this subject led you to doubt of the policy of providing for the religious wants of the community in such a country as Canada, by a permanent revenue

derived from the appropriation of any portion of the soil?—In answering that question, I would beg to draw a distinction between glebe appropriated for the actual use of a clergyman and large masses of land set aside to provide a revenue for the church; I think the first is in the highest degree expedient; I think the other necessarily presents practical difficulties, which it would be very desirable to remove; and it appears to me that the practical remedy in the present instance is to appropriate glebe land, when circumstances require it, for the use of clergymen of the Church of England; and with respect to the general revenues of the church, to apply the proceeds of the sale of those revenues as they are progressively released from mortmain. I would wish to explain, that when I allude to appropriating glebe specifically to a clergyman of the Church of England, I do not mean necessarily out of any lands reserved by the Act of 1791, but out of lands at the disposal of the Crown, if such were more conveniently situated, which could be exchanged for lands so reserved.

Query 44.—From the opportunities you have had of ascertaining the feelings and opinions of the people of Canada on this subject, should you not be disposed to say that Government and the Legislature of England should be very cautious of doing any thing which could give rise to the slightest suspicion that there was any intention of establishing a dominant church in that country?—The Act of 31 Geo. 3, c. 31, clause 36, established the clergy reserves, that is, directed that one-seventh part of the grants of land should be allotted and appropriated for the support and maintenance of a Protestant clergy within the colonies; and it is stated that this is done for the purpose of making the best arrangement, with a view to the due and sufficient support and maintenance of a Protestant clergy within the said provinces. The 37th clause enacts, "that all and every the rents, profits, or emoluments which may at any time arise from such land so allotted and appropriated shall be applicable solely to the maintenance and support of a Protestant clergy, and to no other use and purpose." Up to this point therefore no reference is made to an endowed church; but the 38th clause proceeds to enact, "that it should be lawful for His Majesty, &c. &c. to constitute and direct within every township or parish which now is or hereafter may be

formed, constituted or erected within either of the provinces of Lower or Upper Canada, one or more parsonage or rectory, or parsonages or rectories according to the establishment of the Church of England, and from time to time, by an instrument under the Great Seal of such province, to endow every such parsonage or rectory with so much or such part of the lands," &c. meaning the clergy reserves, as it might be judged to be expedient under the then existing circumstances of such township or parish then to appropriate. The next clause attaches the same terms and conditions to those parsonages or rectories, and the same performance of duties, as are incident to a parsonage or rectory in England. The next clause places them under the jurisdiction of the bishop. The 41st clause gives a power, and a most important one, to the local legislature, of varying or repealing several provisions there recited in any Act or Acts which, being passed by the two Assemblies, should receive the consent of the Crown. In answer therefore to the inquiry, whether I should not be disposed to recommend caution, lest any suspicion should arise that there was an intention of establishing a dominant church in that colony, I beg leave to be permitted to make the following observations: It is perfectly clear to me, that the framers of that Act entertained the erroneous impression that this system of reserved lands would, in a short time, comparatively speaking, produce a fund which might be generally applicable for the purposes of furnishing income to the clergy of the Established Church, whether of England or of Scotland, as I conceive the words "Protestant Clergy" to refer to clergy of the two recognized establishments; and it appears to me, from the construction of those clauses, that a special endowment of land, in cases where there was a demand, for the Church of England was provided for, whereas there was no such provision made for the Scotch Church; I consequently consider that I am justified in inferring that the Church of England was intended to be so far a dominant church as to have the advantage of lands specifically appropriated for its maintenance, as contradistinguished from the Scotch Church, which was to have such proportion of the profits, rents and emoluments of those reserves as, under the discretion of the Executive Government, it might be expedient to allot to them.

But it appears to me quite conclusive, that there was no intention of necessarily establishing the Church of England as a dominant church, inasmuch as the 41st clause gives a power to the local legislatures, with the consent of the Crown, of altering all the provisions which are contained in the 36th, 37th, 38th, 39th, and 40th clauses.

Query 45.—Would the measures you have suggested go to affect the appropriation of the clergy lands when they become improved, according to your plan?—If the Committee will allow me to re-state my suggestion, it is this: that for the purpose of relieving the province from the practical inconvenience of those portions of reserves which impede the general cultivation and civilization of the province, I propose that part of them should be alienated for the purpose of making roads, in preparing them for cultivation, and for settlement. At present there is no power under any Act of effecting this purpose, inasmuch as the law only allows of their being sold, and the proceeds of such sale being impounded for future appropriation. If those reserves were to be retained for any very extended period, there can be no doubt that ultimately, after the lapse perhaps almost of centuries, they would acquire very great value; but if they are sold at an early period, it appears to me that the money for which they may sell may legitimately be applied for the purposes contemplated under the Canada Act, namely, the support of a Protestant clergy, including under that term the clergy of the Established Church; and I do not perceive what detriment can possibly accrue to the colony (provided those lands are progressively released from mortmain) in consequence of the interest of the money for which they may be sold being applied for that purpose. I should propose that all the better portion of the clergy reserves, which have already acquired a value from their proximity to cultivated lands, should be first subjected to sale, and so on till the whole are disposed of. Mr. Ellice states, in his evidence with regard to these reserves, that there is no hope of their being sold to the extent of 100,000 acres annually, or even of 25,000 acres being so sold. He adds, "They do nothing to encourage settlers; they neither make roads, build mills, nor lay out one shilling of capital." Now I propose to remedy those defects, by allowing the absolute aliena-

tion of part of those very reserves for the purpose of making those very improvements.

Query 46.—What has been the object of limiting the quantity of clergy reserves that can be sold in one year?—From the supposition that there would be no demand for their sale beyond that amount, considering the quantity of land that the Canada Company has to dispose of, and the mass of land that is ungranted.

Query 47.—Would not that state of things make the limitation unnecessary?—The reason is this: if it were not limited, 500,000 acres might be brought into the market and sold for nothing, and therefore it was to prevent the reserves being hastily and improvidently brought into the market that limitation was made; but if there was any chance of effecting a sale of those reserves at an earlier period, I should consider the limitation as most impolitic.

Query 48.—The Committee have been informed that the establishment of the University of Upper Canada, from the government of which all denominations of Protestants, except those that belong to the Church of England, have been excluded, has materially tended to increase the jealousy that already existed in Upper Canada with regard to the Church of England; can you inform the Committee under what instructions that University was so founded?—It was founded by a charter under the Great Seal, and it relieved the students from an obligation to subscribe to the Thirty-nine Articles, which had been an obligation imposed by the constitution of the other North American provinces.

Query 49.—In what way is it endowed?—It is endowed with land, and an appropriation made to it from the proceeds of the Crown reserves sold to the Canada Company.

Query 50.—Has not the Council the appointment of the professors?—Undoubtedly.

Query 51.—Are not all the members of the Council required to be members of the Church of England?—Yes.

Query 52.—Have the Crown reserves been effectually disposed of, so as to prevent the inconvenience continuing which has arisen from them?—All the Crown reserves in Upper Canada have been disposed of to the Canada Company, with the exception of those in new townships which have been laid out since the 1st of March, 1824.

Query 53.—On what footing do they stand in Lower Canada? —They still remain unsettled; in fact, the quantity of land that is settled is so much less in the Lower than in the Upper Province, that there is a much smaller proportion of Crown reserves in the one than in the other. But nothing in my opinion can be more impolitic than to make any distinction in the six-sevenths that belong to the Crown. I consider the principle of reservation of a seventh for the Crown to be an erroneous one, as the first object should be the entire settlement of particular districts, rather than a partial and general settlement.

Query 54.—Will you inform the Committee of the sums that have been paid by the Canada Company, and their appropriation? —The sum which the Canada Land Company is actually bound to pay in sixteen years in annual instalments amounts to 301,367*l.* sterling. They are compelled to lay out on the improvement of a block of a million of acres, given in lieu of the clergy reserves, a sum amounting to 43,000*l.* On the 1st of July, 1826, the first payment commenced of 20,000*l.*; that payment exceeded some of the subsequent years, in order to cover the expenses of the arrangement. In 1827, 15,000*l.*; in 1828, 15,000*l.*; in 1829, 15,000*l.*; in 1830, 16,000*l.*; in 1831, 17,000*l.*; in 1832, 18,000*l.*; in 1833, 19,000*l.*; in 1834, 20,000*l.*; and 20,000*l.* every succeeding year to the end of the term, it being at the option of the Company to increase the annuity payment as it may seem fit, it being provided, that in the last year the account shall be completely settled, that is on the 1st of June, 1834. The appropriation which the Secretary of State recommended to the Lords of the Treasury is as follows: first, the sum of 8500*l.* per annum for the civil establishment of Upper Canada, which till that year had formed an item in the estimate annually voted by Parliament; secondly, 1000*l.* as an annual grant towards the building of a college for the province; thirdly, the sum of 400*l.* as an annual salary to the Roman Catholic Bishop resident in that colony; fourthly, the sum of 750*l.* as an annual provision for the Roman Catholic Priests in that province; fifthly, the sum of 750*l.* as an annual provision for the Presbyterian Ministers in connexion with the Church of Scotland, having stated congregations in the province; sixthly, the sum of 400*l.* as a pension to

Colonel Talbot, as a reward for the services of that officer, and the sacrifices he had made in settling the London and Western districts; the sum of 2566*l.* as an annual compensation for the period of seven years to those officers of the land-granting department in Upper Canada, who by the adoption of the new regulations for granting lands are deprived of their emoluments. The sum total of those appropriations amounts to 14,766*l.*, which leaves an unappropriated balance of 733*l.* per annum.

Query 55.—Mr. Ellice has stated that there was no occasion for the Government applying this money to the payment of the civil list in Upper Canada, as the ordinary revenue received on the trade of Canada is perfectly adequate, or might be made perfectly adequate, to the discharge of the civil lists of both provinces; do you concur in that opinion?—I am at a loss to understand upon what data Mr. Ellice gives that opinion. I believe nothing can exceed the economy with which the Legislature of Upper Canada dispenses the finances under their control; and I know no fund from which the payment of the 8000*l.* annually voted by Parliament could be forthcoming.

Query 56.—How is the clergy corporation appointed?—The clergy corporation was established at the recommendation of the Governor and Executive Council, and appointed by instructions sent out to the Governor of Canada to appoint a Committee of the clergy, of which the bishop should be at the head, for the purpose of considering the most productive mode of dealing with the lands set apart for the clergy, under the 31st of the King, such disposition being necessarily limited to leasing, as there is no power of alienation under the Act.

Query 57.—By what instrument has that corporation been appointed?—Such an appointment would be made under the great seal of the province, under instructions from the Government at home.

Query 58.—Is there a copy of that instrument in the Colonial Office?—I believe not, the instrument having been prepared in the colony.

Query 59.—Is there in the Colonial Office any copy of the instructions which directed the Governor to issue such an instrument?—There is.

Query 60.—You are aware that Mr. Ellice has stated his

opinion that blame ought not to be imputed to any persons connected with the Executive Government in either province, but that the dissensions in Canada were the inevitable consequences of a determination on the part of the Government at home to persevere in a wrong system?—I find great difficulty in reconciling Mr. Ellice's evidence on this point. He states that the great object of the Assembly of Lower Canada is to retain their separate institutions, their laws, their church, and their condition as distinct from the people of America, and that though much may be done by mutual concession, all their objects can only be effected at the expense of the interests of the English population, and by the retardment of all improvement in the country. The Committee are aware that this is precisely the language which is maintained in the petitions from the townships, which have been presented to Parliament, and especially in those which are laid before this Committee, from the townships to the Governor-General in the year subsequent to the proposition of the Union. Those petitions distinctly express the gratitude of the petitioners to the Legislative Council, for having resisted the attempt of the Assembly to prejudice the English population and to retard improvement. Whereas the Legislative Council is complained of, on the part of the French Canadians, as being the main source of all the dissensions existing in the province. Mr. Neilson employs these words: "The laws that are conceived by the people to be necessary for the common welfare are rejected by the Legislative Council, that being chiefly composed of persons who are dependent on the Executive Government of the province." The object of the opposition of the Legislative Council to the measures of the Assembly, if Mr. Ellice's view of the purposes of that Assembly be correct, is to maintain the interest of the English population, and to prevent that retardation of the improvement of the country which Mr. Ellice states the French Canadians to contemplate. I would wish to show that the opinion of the English population is such as I describe, by reference to the following paragraph, which appears in the petition to the House of Commons from the townships:—"That while your petitioners waited patiently the effect of their repeated solicitations for redress of grievances, to be administered by the Provincial Legislature, the Legislative Council, in the session of the year 1825,

by recommendation of his Excellency the Governor-in-Chief, passed a bill of the most salutary description, introducing into those townships the English law of dower and conveyance, and making incumbrances special, establishing also public offices therein for the enregistration of all mutations of real property, and of all mortgages on the same; that though this bill, carefully abstaining from every unnecessary innovation, neither disturbed the routine nor touched the customs of the French Canadians in the seigneuries, the House of Assembly, evincing its characteristic disregard for the claims of your petitioners, neglected to proceed upon the same bill when sent down for concurrence," &c. And Mr. Robert Gillespie, one of the witnesses before this Committee, being asked in what manner the dissensions between the different branches of the Legislature obstructed the operation of commerce and the improvement of the Canadas, answers in these words: "By preventing the enactment of laws necessary for the security of trade, there is no such thing as knowing at present when real property is mortgaged or not;" and so on. On the other hand, Mr. Neilson states, "that no change which will be for the general good of the country will be resisted by the Assembly, for the Assembly are the true representatives of the people, and must do what will be for the good of the people; if they do not, they had better go home and mind their own business." The Committee cannot fail to observe that the question turns upon, whether the good of the people is to be promoted by approximating their institutions towards the English system, or by not only maintaining the French institutions in their present integrality, but by extending it over all that portion of the Lower Province which is inhabited by an English population. This is the real key to the dissensions which have existed in that province, and which I consider to have grown out of the short-sighted legislation of 1791; in proof of this I would remind the Committee that Mr. Viger adverts in his evidence to the improved condition of Lower Canada, which would have taken place if a proper system of conduct had been followed with regard to the Canadians. This question is then put to him: "When you say a proper system, do you mean if the French system and the French law had not been obstructed in its operations?" He

answers: "So far as this, that they should have continued to let the French law prevail all over the country." In point of fact, nothing can be more discrepant than the views which are entertained by the agents for the French population of Lower Canada with respect to the functions and duties of this Legislative Council, which one party supposes to be the source, and the other the prevention of all mischief. Mr. Neilson says, "that an independent Legislative Council would give to Canada something like a British Constitution, in that case there would be a body that would have a weight in the opinion of the country when the Governor and the Assembly were at variance, and on whichever side they declared they would incline the balance;" whereas Mr. Viger is asked, "Is it not the wish of the Canadians to change the structure of the Legislative Council, and to take measures for ensuring its formation in such a way as to make it likely that it would agree with the Legislative Assembly?" He answers, "I am sure we must wish that the Legislative Council should be composed of men who would side with the mass of the people."

Query 61.—Mr. Neilson states that in Nova Scotia, where things go on very well, the revenue depends upon an annual vote of the Legislature, so that not only the appropriation of the money, but the very collecting of the money is dependent upon an annual vote of the Legislature, and there the Government and the Assembly go on very well in concert; can you inform the Committee whether that is correctly stated?—Mr. Neilson totally omits to state that the civil list is voted by the British Parliament, and that consequently the same cause of collision does not exist there which exists in Lower Canada. It is unnecessary for me to explain to the Committee that this is the case in all our North American provinces, with the exception of Upper Canada, the expenses of whose civil list however are defrayed from proceeds of funds belonging to the Crown, and are not dependent on a vote of the local Legislature.

Query 62.—You have heard much observation from the witnesses respecting the constitution of the Legislative Council; have you any remarks to offer to the Committee on that subject?—Here again I would call the attention of the Committee to the different evidence which is received on such points; Mr. M'Gillivray states,

that those who are opposed to the measures of Government complain of the Legislative Council, who generally have sided with the Governor when there has been any question in difference between them; but he adds, "I have not heard of any complaint of the composition of the Council; where there are parties, however, there will always be complaints." I have no hesitation in expressing my concurrence in the abstract opinions respecting the composition of the Legislative Council which have transpired during this inquiry, but I doubt extremely whether, under the circumstances of Lower Canada, it is possible to bring this Legislative Council to that state of theoretical perfection which is looked for by some members of the Committee; at the same time, with respect to this Council, as well as to all other points where an improved system can be applied, it is necessarily the duty of Government so to apply it.

Query 63.—You are aware that Mr. Neilson has given evidence respecting the dismissal of militia officers by Lord Dalhousie; have you any information to give to the Committee on that point?—The following general orders, which were issued at two different periods by Lord Dalhousie's directions, will explain the grounds which his Lordship assigned for the measure in question. The Committee will perceive, from the general tenor of those orders, that it was for conduct connected with their duty as militia officers that his Lordship was mainly induced to dismiss the individuals in question. "Office of the Adjutant-General of Quebec.—Quebec, 12th of September 1827.—General Order of Militia.—His Excellency the Governor and Commander-in-Chief takes an early opportunity to express to the battalions of militia in Lower Canada his sentiments on certain recent proceedings which nearly concern their loyalty and honour. It is well known that the laws under which the militia force has been regulated for many years have been enacted for short periods, and have been repeatedly renewed as a substitute for the permanent laws passed in 1787 and 1789. Those temporary Acts, however, not having been renewed in the last session of the Provincial Parliament, expired on the 1st of May; and it was immediately notified to the militia by His Excellency's directions, that under the existing circumstances the old permanent ordinances came into force. Evil dis-

posed persons were not wanting to spread doubts on the subject, and to those were added gross misrepresentations and calumnies regarding the intentions of the Executive Government, all tending to create discontent and dissatisfaction in the province, but more particularly to induce the militia to object against and disobey the orders issued under those ordinances for the usual musters in summer. The Governor-in-Chief has seen with great satisfaction that the utmost exertions of the ill-disposed have totally failed to disturb the national disposition of the people to order and obedience, with very few exceptions, and those chiefly of officers holding commissions. The musters of July and August have been unusually numerous and well attended. It is therefore an important and a most agreeable duty to his Excellency to offer his warmest acknowledgments in approbation of that conduct by which the battalions of militia have shown their loyalty and proper sense of duty; but while the Governor-in-Chief thus gives the reward of praise where it is so well merited, he feels that his duty imperiously calls upon him at this time to deprive of the distinction of holding commissions in the militia all such persons as have neglected to attend at the musters required by law, or who by their conduct or language at public meetings have failed in that respect which is due to the representative of their Sovereign. This however, is a work of time and investigation, which, though necessarily attended with some delay, will not fail to receive his Excellency's serious and deliberate consideration. By order of His Excellency the Governor-General and Commander-in-Chief, F. Vassel de Monoel, Adjutant General M. F."

The other order is as follows: "Office of Adjutant General of Militia, 12th December 1827.—General Order of Militia.—The Governor-in-Chief having for some time past occupied himself in considering reports of reviews by officers commanding battalions of militia, has great satisfaction in again expressing his approbation of the general disposition and orderly conduct of this great national force. The reviews have been fully attended, and there are but few instances in which the Governor-in-Chief would think it at all necessary to express censure; his Excellency therefore conveys to all, and to each battalion, his thanks for their conduct, trusting that the next summer he shall find no cause to repeat the

only disagreeable part of duty which remains for him to perform, that is, to publish the names of those officers who can offer no sufficient apology for their neglect of duty and absence from muster."

I have only further to explain that Lord Dalhousie states that His Majesty's Attorney-General in the province of Lower Canada gave an opinion that the old ordinances of 1787 or 1789 had revived, and certain militia officers having impeached Lord Dalhousie's consequent judgment upon this occasion, founded, as it was, upon the opinion of the Attorney-General, not only refused to attend the summer musters, but otherwise exhibited a spirit of disobedience to orders; in consequence of which Lord Dalhousie dismissed those persons, the circumstances of whose conduct and situation made such an example necessary; and on the grounds stated his lordship's conduct received the sanction of the Secretary of State.

Query 64.—Mr. Cuvillier in his evidence states, that Lord Dorchester, in his Message to the Legislature in 1794, in the name of the King, gave the casual and territorial revenues to the province of Lower Canada, towards the support of its civil government; hence, he says, the control which the Assembly has over those revenues. It is in consequence of this gift on the part of His Majesty to the province, for the public uses thereof, that the Legislature has a right to appropriate them. He is then asked, "In what form was that gift made?" and he answers, "By message." Again he is asked, "Did that message of Lord Dorchester say that the King would appropriate those revenues for the use of the province, or that he made them over to the Legislature, to be appropriated by them for the use of the province?" he answers, "That he does not recollect the precise words of the message, but that he does recollect that the casual and territorial revenue was given to the province in aid of its civil government." Can you supply the Committee with any decided information upon this point?—It appears in the Journals of the House of Assembly of the 29th of April, 1794, that "a message from his Excellency the Governor, signed by his Excellency, was presented to Mr. Speaker, which message was read in English and repeated in French, all the members of the House being uncovered, and the same is as fol-

loweth :—Dorchester, Governor.—The Governor has given directions for laying before the House of Assembly an account of the provincial revenue of the Crown, from the commencement of the new constitution to the 10th of January, 1794: first, the casual and territorial revenue, as established prior to the conquest, which *His Majesty has been most graciously pleased to order to be applied towards defraying the civil expenses of the province.*" The Committee will not hesitate to admit that an expression, on the part of the Crown, that orders have been graciously given to apply the territorial revenue towards defraying the civil expenses of the province, cannot, in reason or in justice, be considered to be a gift to the Legislature, by which the Legislature obtains the right of appropriation. I would beg leave to lay before the Committee, in illustration of this distinction between applying the local revenues at the discretion and under the sanction of His Majesty's Government for the benefit of the Colonies, and the surrendering them to the colonies for their absolute appropriation, by the following letter, which was addressed by Lord Bathurst, as a circular letter to the colonies having local legislatures, on the 8th of October, 1825, and which appears to me to express most clearly the reasons why an annual vote of the Civil List is less preferable to a more permanent arrangement. "Downing-street, 8th October, 1825.—Sir,—You are aware that in all discussions which of late years have taken place in Parliament on the subject of the Colonial Estimates, it has been objected that the North American colonies ought to take upon themselves those permanent and necessary expenses of their civil government which have hitherto been charged upon the revenues of this country. I have always felt unwilling to enter upon this subject until the period should arrive when, from the growing prosperity of those colonies, and from the condition which they had, in fact, attained with respect to their population and resources, I could press it with the conviction that the proposition was not only one which ought to be entertained by the Legislature, but one which would be met by a most anxious disposition to comply with the wishes of Government. I also deferred pressing this point until Parliament has actually removed those restrictions to which the commerce of the colonies had hitherto been subject; because, though it might

not have appeared unreasonable to have made the extension of a policy so liberal towards the colonists, in some measure dependent upon their assuming upon a just footing the charges of their own Government, yet I felt it a more pleasing course (and one which I trusted would be found not less effectual,) to rely rather upon the disposition of His Majesty's subjects in the colonies to evince a just sense of these advantages after they should have been conferred upon them, than to have attempted to induce them to a compliance with the proposition by any promise of consequent concession and advantage. By the measures which Parliament has recently adopted the restrictions I have referred to are removed, and the colonies now enjoy, under the protection of His Majesty, the same freedom of trade with the parent state and with foreign countries as if they constituted, in fact, integral parts of the United Kingdoms. Such a state of things, it is confidently hoped, cannot fail to produce an increase of prosperity that will either enable the colonists to bear the charge of the Civil Government without necessity for imposing additional taxes, or will make the increased taxes, which it may be necessary for a time to provide, less burdensome than those which they are now obliged to sustain. I have had frequent occasion to regret the inconvenient consequences which have arisen in some of His Majesty's colonies, from the practice of providing by an annual vote for those charges of the Civil Government which are in their nature permanent, and which therefore ought not, consistently with those principles of the constitution common both to the United Kingdom and to the colonies, to be classed with those contingencies of the public service which, being necessarily fluctuating, may be fitly provided for as the occasion appears to demand. In point of fact, the necessity of an annual vote for the maintenance of a fixed and permanent establishment is only calculated to embarrass the public service, and to disturb the harmony which ought to exist among the different branches of the Legislature; it even tends to impair that confidence between the Government and the inhabitants of a colony, which is equally necessary to the just support of the former and to the happiness and prosperity of the latter. In the practical execution of this proposition, it cannot fail to be satisfactory to the Legislature to

observe, that it is not intended that the provincial revenues should be charged with any excess beyond the long-established and ordinary charges, unless a further increase should by them be deemed expedient. The charges of which the present estimate consists being all strictly of a permanent description, I should propose that the Act, which will be necessary to make provision for their assumption by the colony, should continue in operation for the space of ten years. The cordial adoption of this proposition on the part of the Legislature cannot fail to draw still closer the ties which so happily subsist between the mother country and her dependencies, and to induce a favourable disposition on her part to apply her capital for colonial purposes. And when it is considered how heavy an expenditure is necessarily incurred by Great Britain in the military defences of her colonies, it would seem unreasonable, under present circumstances, to question the readiness of the latter to provide in a proper manner for the necessary charge of their civil government. You will explain in the fullest manner to the Legislature, in the course of the next session, the expectations of His Majesty's Government upon this subject, and you will at the same time inform them, that whatever funds may be raised or received within the province, such funds not being under the control of the Legislature, will be appropriated for the benefit of the province, at the discretion and under the sanction of His Majesty's Government."

APPENDIX (C.)

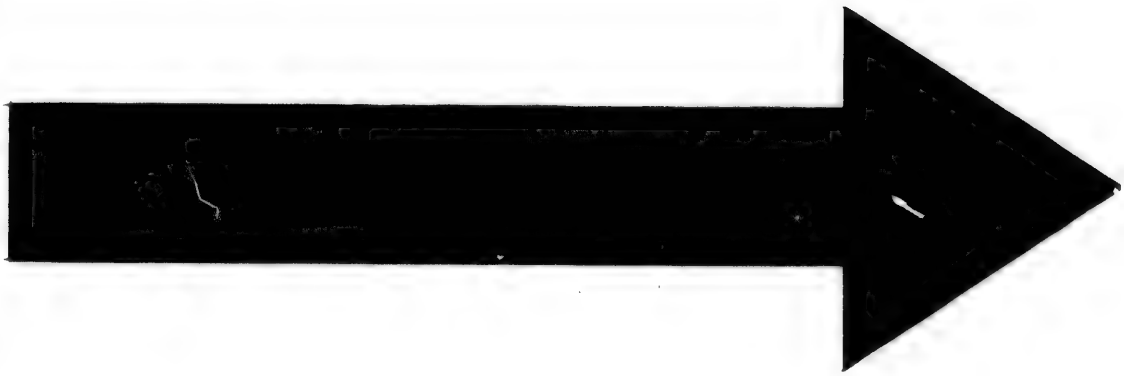
EXTRACTS from the EVIDENCE of EDWARD ELLICE, ESQ., before the Select Committee on the Civil Government of Canada.

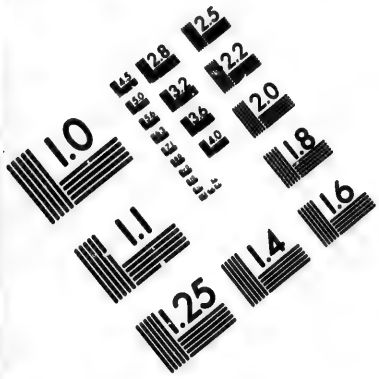
WERE not the boundaries of Upper and Lower Canada settled in consequence of the provisions of the Act of 1791?—They were.

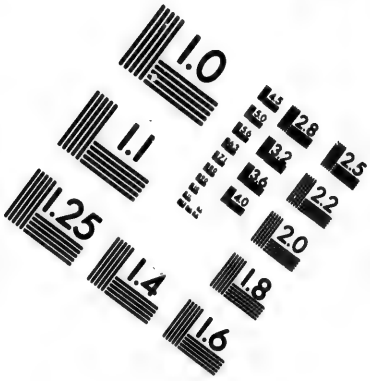
In your opinion, has the boundary line between the two provinces been drawn conveniently for the two provinces; or is the division so arranged as to give rise to very conflicting interests and separate feelings between them?—The division altogether was most unfortunate, and has completely verified the predictions of its consequences, made at the time by the agent of Canada, and by all the witnesses examined at the bar of the House. The result, so far, of maintaining distinctions between two classes of subjects, has produced no proof of its policy. As to the particular boundary or division of territory, that is very immaterial, and I do not believe you could satisfy either party in the general questions now under discussion by any alteration in that respect.

In point of fact, has not a very strong collision of feeling, and a sense of difference of interest arisen between the inhabitants of the two provinces?—The greatest possible collision of interest has arisen on the subject of the revenue; and unfortunately there is every reason to apprehend it is only now at its beginning.

Will you be so good as to state the principal grounds of difference that exist between the two provinces?—The principal ground is, the pretension set up by the French Legislature at Quebec to regulate the trade of the St. Lawrence, and to levy all duties upon the exportation or importation of commodities either going from or to every part of Canada, without consulting the Upper Province on this point of deep and vital importance to its







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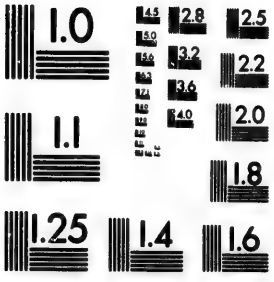

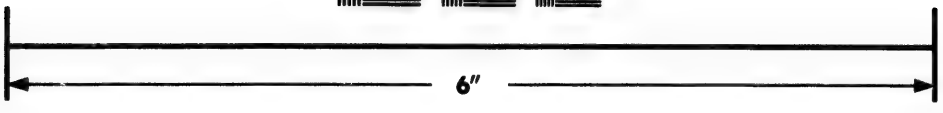

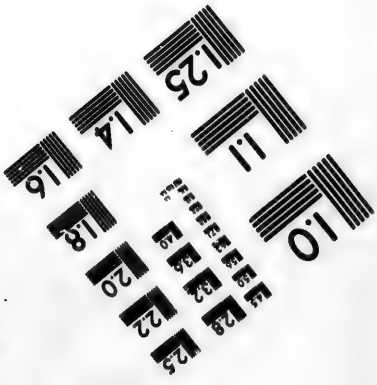

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inhabitants. This grievance will of course be more deeply felt as the hitherto rapid settlement of Upper Canada, encouraged by more liberal institutions, and a better state of law, progressively advances. The French population of the Lower Province have not increased or improved their condition in any respect in proportion to that of the English population either in Upper or in Lower Canada, nor is there any reason to believe that their numbers or their interest in the country will in future increase in proportion to the increase that must take place in both colonies in British inhabitants and British capital. As the British interest increases in either province, a community of feeling will necessarily lead to their closer connection together; and I am afraid, if even it was the determination of Parliament to maintain the ascendancy of one class of the population of Lower Canada, and their exclusive powers over the taxation and commerce of the country, the British inhabitants of both Provinces would, at no distant time, look to some other means of relieving themselves from so intolerable a grievance. * * *

If one rate of customs' duties must be collected in the revenue, and one mass of revenue is collected, and no fair or equitable division is made between the two provinces, does it not necessarily follow that there must be one expenditure?—That I take to be one of the most difficult points of this case. Supposing any idea to be entertained of re-uniting those provinces, I have always thought the more prudent course to adopt, and one which the paramount object of preventing at first any collision in the united Legislature on the heretofore separate interests of the parties would justify, would be to fix the present revenue, and apply such part of it, for a certain number of years, as would be necessary to defray the charges of the existing civil lists in both provinces.

How could that object be effected?—By adequate provisions in a bill for uniting the Legislatures, specifying in the schedule to the bill, in minute detail, the different charges to be defrayed, in such manner so that there should be no ground for suspicion that it was intended either to increase the charge or to give the executive authority any discretion in the payments. I think this arrangement might not be objected to, on the ground I have

stated, for a limited period of from five to fifteen years. Any surplus of revenue, or monies raised for the improvement of the country, or for the increase of the establishments in proportion to the gradual increase of the population and the wants of the administration, would be still under the control of the Legislature, and at the termination of the limited period the full power of regulating the taxation and expenditure would revert to them. Before that time, it is to be hoped, all separate habits and interests might be nearly lost sight of, and the present collision of feelings and prejudices give way to a general desire to consult only the common good and the prosperity of the country in the united Legislature.

Has the House of Assembly of Upper Canada ever expressed any wish for a union of the two provinces?—I have not heard so, nor do I conceive the fact either way to be of much importance. The people and the Legislature are only desirous to participate in the exercise of the undoubted right of the whole people to raise the revenue and regulate the commerce of the country.

In what way, in the case of the union, would you provide for the more general services, and the rest of the revenue remaining after the disposal of the civil list?—I would leave it at the free disposal of the united Legislature. I am perfectly satisfied, a governor of conciliatory disposition, popular character, and good sound sense, acting upon instructions from this country, founded on liberal principles, would have no difficulty in balancing and conciliating the different parties in the Legislature, and procuring from them ample means of improving the institutions, and promoting the general interests of both provinces.

When the union of the two provinces was proposed in Parliament, did not a feeling arise in Lower Canada extremely hostile to that measure?—An adverse feeling certainly was expressed by the French population in Lower Canada, but not to a greater degree than was anticipated.

Was not one of the grounds upon which that feeling was founded an apprehension, that under the circumstances of the Union the provision for the maintenance of the Roman Catholic clergy might be endangered?—There were several ill advised clauses in the Bill. It was suggested by the original proposers

of the measure that some clause should be inserted protecting the Catholic church and the rights of the clergy from all encroachment by any Act of the new Legislature. This intention was not accomplished by the clause in the Act, which was construed by the clergy as direct hostility against their establishment. Nothing could have been so contrary to the feeling with which any mention of the Church was suggested, and it would be consistent equally with justice and policy to provide distinctly in any measure for uniting the Colonies, against all dangers the clergy may apprehend in this respect.

Each of those provinces having now a representative assembly, would it in your opinion be possible or desirable to leave to those assemblies the regulation of such matters connected with each province as might be considered as local and particular, and to assemble a Congress, consisting of certain members of both bodies, to which might be given the charge of such concerns as should be general to the two provinces; among which may be enumerated the collection of the revenue, great institutions for the purpose of defence, and the general application of the revenue, appointing to each of them a fixed civil list?—If it were possible to satisfy the parties by any arrangement more than by the whole measure of a union, I should be much inclined to sacrifice a great deal for that object. But a Congress would in fact be only a union with more complex machinery; and I doubt whether the objection of one individual in Lower Canada to any measure of this description would be removed by it. The same difficulty would occur in apportioning the influence of the two parties in the Congress, as in a Legislature common to both, and you must make some alteration in the constitution of the Assembly of the Lower Province by the admission of representatives from the townships. The great desideratum is to infuse into the legislative body, under whatever regulations it may be placed, persons of liberal education, who may be able to counteract the influence of narrow habits and old prejudices in retarding the prosperity of the country.

Would not the same objection exist if a legislative union took place; would not the effect necessarily be, upon similar principles, to extend the influence of the French Canadians to Upper

Canada?—Certainly not, if you were to unite the two Legislatures, adding to them a fair proportion of representatives from the unrepresented townships in Lower Canada. * * * * *

What would be the effect of including the Island of Montreal in Upper Canada?—I do not think that any new division of the boundaries would improve the condition of Upper Canada, and the separation of Montreal from the Lower Province would produce more dissatisfaction than a more efficient measure. * * *

Can you state any other grounds of objection which have been urged to the union of the two provinces besides those which you have alluded to?—I have heard of no other grounds; but it is quite impossible there should not be a great difference of opinion on a subject affecting in so many ways the particular interests, both of individuals and parties. For instance, persons residing at Quebec, and at York in Upper Canada, may neither approve of the removal of the Legislature to Montreal, supposing that to be the proper place, if a union should be decided upon. * * *

APPENDIX (D.)

THE FRENCH CANADIANS.

To the Editor of the Morning Chronicle.

SIR,

At this moment, when all British subjects, to whom our colonial prosperity, or, indeed, the real welfare and genuine liberty of their fellow-subjects in general, are objects of any value, must be watching with deep anxiety the result of the disastrous outbreak which recently occurred in Lower Canada, a few observations on the subject of that colony, from one who has had some years' experience of it, may not be wholly without interest. Not that those observations will contain much, if any, of novelty. But it sometimes happens that truths, though "familiar as household words" to those whose duties or interests bring them in constant contact with the subject of them, are forgotten or lost sight of by the generality, whose attention is distracted among a variety of objects, and is only casually called to the subject in question. And such must ever be more peculiarly the case with respect to any one of the numerous offsets from the parent stem of this vast empire.

Let me guard myself, however, against being understood as upholding or defending, by anything I am about to say, any abuses really existing and requiring reform in the province. If it should be considered right, upon constitutional grounds and after mature consideration, that the Legislative Council should be elected, as well as the House of Assembly, by the people—if it should be decided that the judges and magistrates, and her Majesty's law officers ought to receive their nomination from the latter body instead of from the Queen—let these reformations, and

all others which may legally and constitutionally be resolved upon, be carried into execution in proper time and proper manner; though I should scarcely suppose that, after these two measures had been carried, and I know that the last of them has long been the real object of the democratic party in Lower Canada, her Majesty would be advised to continue the expensive establishments now existing on the banks of the St. Lawrence, for the very empty honour of still numbering Lower Canada, nominally, among her colonial possessions. But the point on which I wish your readers to satisfy themselves is, whether, supposing these changes in the constitution to be called for; admitting for the sake of argument, that a thousand abuses are still crying out for reform—whether, I say, there be anything in the actual condition of the Canadians, any suffering or privation on their part, resulting from such supposed maladministration as can afford the slightest shadow of justification of the means now attempted to be resorted to, for the alleged object of obtaining redress. If, indeed, I were addressing these observations only to those who content themselves with reading the more moderate portions of the press, I should consider it a very unnecessary waste of time to combat the idea that open rebellion is, in the present instance, if ever, to be vindicated. But when one sees it boldly asserted, in speeches and in newspapers, French as well as English, that the Canadians are suffering and writhing under the tyranny of their governors, to a degree that almost challenges a comparison with the Poles or the Irish, it becomes a natural and very necessary question what the real condition is, and what the feelings of this people, who are thus supposed to be ground and persecuted into rebellion.

Now, I believe it would be impossible to find any one single spot in any one quarter of the globe, the population of which is, on the one hand, in such perfect enjoyment of all that conduces to happiness and comfort, and, on the other hand, so exempt from all those restraints, vexations, and contributions which usually in societies form the price paid by the community for government and protection. The curse of taxation is there scarcely felt. Liberty, whether as regards their religion, action, speech, or writing, is enjoyed as fully and amply as in our own England. Independence, as respects property, exists to such an extent, or,

I ought rather to say, approaches so nearly to universal proprietorship, as would, I fear, excite no small feeling of envy among *our* less favoured peasantry, acquainted only with our more civilized and more unequal distribution of property. The word "labourer," in the European acceptation of the term, is almost without application in Lower Canada, unless, indeed, in the persons of some of the poorer emigrants of the mother country. The word "paysan," again, appears to have been rejected, as if the usual acceptation of it in the old world had rendered it unworthy of a race of landowners; and "habitant" is the word universally used to designate them, as if to point out *the* occupants, *par excellence*, of the country, as distinguished from those who dwell in the towns. By the operation of the law of inheritance, every French Canadian succeeds to his father's freehold, or to a portion of it; and, unless he loses it by his own folly or misconduct, lives and dies on it. Accordingly each Canadian has his own house, warm, substantial, and commodious; fuel for little more than his trouble of cutting it; his land and garden (in which the tobacco, free from duty or excise, makes a conspicuous and luxuriant appearance,) rarely failing to yield a good crop, in spite of bad farming, which is adhered to with all the obstinacy of independence; cattle, according to the extent of his land and his own taste, with a certain market, easy of access for his surplus produce; and, with rarely an exception, one or more stout handsome little horses of the old Norman breed, with his two carriages, a cariole on sledges for winter, and the old-fashioned calash for summer. And I wish that those who cry out against the oppressed state and discontented spirits of the French Canadians could witness, as I have often done, the assemblage at one of the *paroisses*, or parish churches, on a Sunday. Scores, I believe I may say hundreds, of these carriages, waiting, without coachmen or footmen, it is true, but in perfect security, till the service is over; and then a pouring forth of cheerful and respectable-looking men, with their wives and children, all well and warmly clad, chiefly in clothes of their own manufacture, preparing to drive back to their respective homes; but not till they have made their respectful and affectionate farewell to their curé, and interchanged kindly expressions or looks with their neighbours. Follow the course of

the St. Lawrence, from its gulf up to the confines of the upper province (for Lower Canada is in truth little more than a belt of villages running along each bank of the river), and say whether this picture be partial or overdrawn. All those who know the country will pronounce it to be universally and strictly true.

And these are the men who, it is hoped—most erroneously I trust—will be persuaded to leave their comfortable homes, for the prospect of falling, either in an unequal and unholy conflict with their fellow-citizens, or by the ruthless hand of a Canadian winter! And for the redress, too, of grievances which, even supposing them to be anything but imaginary, are subjects of the most profound indifference to the French Canadians. I have often been amused at the difficulty experienced in warming them, even during the almost universal excitement of a general election, to anything like the fever heat required for common party purposes. A would-be popular leader may of course always find a few followers among his own friends and relations. But the mass of the population have always appeared to me to be deaf to the history of their own unfelt wrongs. They form an entertaing illustration of Mr. Canning's "weary knife-grinder;" and are equally proof against the patriotic and disinterested attempts of the transatlantic "Friends of Humanity," to persuade them that they ought to feel very miserable. The "spiritless outcasts" are unreasonable enough to feel that their lot is a happy one, and to be contented with it. So notorious indeed must be the happy state and happy disposition of the Canadians in general, that I never imagined M. Papineau would venture beyond a war against budgets and salaries. The natural idea was that he was playing a game of brag, and trying how far he could go towards the attainment of his favourite object of paralyzing the government by dint of factious opposition to all its measures in the House of Assembly, and of threats and intimidation out of it. Late events, however, have shown that he had prescribed to himself no such limits; and the question now is, or in all probability is before this time decided, how far he may hope for support from his Canadian brethren in the field. My confident hope and expectation is that, though he seems to have succeeded in exciting a considerable number of infatuated or desperate persons to rebellion, he will

look in vain for anything like general co-operation from the mass of the population.

I know it may be said that the stupid contentment of a people, and their blind indifference to oppression, can neither excuse the commencement of the wrong, nor justify the continuance of it. To that proposition I give my cordial assent. Again I repeat, let all existing abuses and grievances be redressed. All I wish to impress upon those who have patience to read this letter through is, that they must not mistake a few hundreds of desperate outcasts, headed by lawyers without clients, and doctors without patients, for "the people of Lower Canada;" nor must they implicitly believe in the existence of the grievances put forth by these desperadoes, even though supported by the confident statements of a small section of violent Radicals in London, or the spiteful but obviously ignorant generalities of some of the Parisian journals.

I am, Sir,
Your faithful and obedient servant,
M.

London, December 26th, 1837.

[Extracted from the Morning Chronicle of Monday January 1st, 1838.]

THE TWO CANADAS.

(Second Letter.) *

To the Editor of the Morning Chronicle.

SIR,

In a letter which I addressed to you nearly six months since, when the public mind was full of anxiety and apprehension respecting the result of a mad attempt to overthrow the British supremacy in Canada, I ventured to express a pretty strong opinion that the rebels would meet with but faint sympathy from the general mass of the population. The events which have since occurred go far, I think, to show that that opinion was not ill-founded. And the state of tranquillity to which both pro-

* Extracted from the Morning Chronicle of Saturday 23d of June, 1838.

vinces, it is hoped, are now restored, leave her Majesty's Government to the equally important, and infinitely more arduous undertaking, of introducing those reforms and improvements, the want, or fancied want of which has been made the stalking horse of those whose object was confusion, not reform; not improved government, but anarchy and plunder.

It is not my intention, at least at present, to enter into a regular discussion of any one of the numerous objects of dispute or agitation at present existing. Indeed, I scarcely know one of them, whether relating to the two provinces connectedly, or to either of them individually, which is not of far too great importance to be treated of thus summarily. And the doubts so becomingly expressed by Lord Durham, as to the success of his undertaking, and the difference of opinion existing in the Imperial Legislature as to the best mode by which the Governor-General may be able to obtain the necessary information on these various topics, are sufficiently indicative of the difficulties with which the path to any adjustment which shall be satisfactory to all parties is strewn. My object in now addressing you is merely to point out to those on whom the heavy and awful responsibility must devolve of ultimately deciding on the measures to be finally carried, the danger of adopting any general system, whether relating to legislative, judicial, or financial subjects, or indeed to any other matter, without not only being satisfied that such system is applicable in point of principle, but also well and maturely examining whether its details are well adapted to the new sphere into which it is proposed to introduce it.

Such a caution may probably appear at first sight wholly superfluous; nor indeed should I now presume to offer it, did not past experience justify and imperatively call for it—experience, too, derived from those very acts of the British Parliament which conferred upon the Canadas some of those institutions of the mother country most valued for the elements of liberty and good government contained in them, and most strongly, therefore, evincing the maternal anxiety of Great Britain that her newly-acquired colonies might, in every constitutional way, be gainers by the transfer of their allegiance. And I cannot help observing, while adverting to this epoch of the history of Lower

Canada, on the barefaced injustice with which a portion of the French press reproaches us with tyranny and oppression towards that Colony. Surely it is a sufficient answer to such calumnies from that quarter to ask, and it is a question which I am surprised has never occurred to these flippant writers—what would be the present situation of Lower Canada, as regards free and liberal institutions, if she had continued under French rule? How many steps would she have advanced towards the attainment of that high degree of civil liberty, from the exercise or rather abuse of which have sprung the very disorders over which the section of the press alluded to so ungenerously exults? Would she not rather, judging from the other French colonies, be as nearly as possible in the same state in which we found her at the cession of Quebec?

But to return to the more immediate object of this letter. Proud as we justly are of our institutions, which, with all their imperfections, I am old fashioned enough to consider better adapted than any others for our home use, we still are somewhat too apt to suppose that they must be equally well contrived for other communities, no matter what their habits, religion, colour, or climate, or what the nature of the laws by which they may have hitherto been governed. It seems to have been considered sufficient that the abstract principle was unobjectionable, without its being judged necessary to inquire how the practical details of the system might work. Of this fondness for the adaptation of the machinery, without sufficiently considering the fitness of the materials to compose it, or of the subject matter on which it is to act, a striking exemplification presents itself in one of the principal causes of the late unhappy differences. The nicely-adjusted balance of King, Lords, and Commons, so beautiful in theory, so efficient in practice (though, by the way, the practice is in truth anything but a faithful reflection of the theory), could not but succeed, it was thought, when represented on the miniature stage of the Colonies, into most of which, accordingly it has been introduced. But in the ardour of admiration of the prototype, the total absence in the copies of materials to form the second or intermediate body between the Crown and the people (I am speaking more especially of Lower Canada, but

the defect must necessarily exist, more or less, in all the Colonies in which "*the constitution*" has been introduced), was overlooked, or at least insufficiently provided for. And accordingly the Legislative Council, the Colonial House of Lords, consists of members, not merely nominated by the Crown, and possessing, therefore, no hereditary or independent claim to sit as legislators, nor, generally speaking, any landed or permanent interest in the Colony, but, for the most part, holding office under government. It is useless and impossible to deny that this forms a most material and almost fatal variance between the original and the copy. It, in truth, renders the Legislative Council little more than a second edition of the Executive Council; in other words, the executive government and the Legislative Council, the Crown and the House of Lords, that is to say, are nearly identical. But would the other horn of the dilemma, on which the ultra-popular party are desirous of fixing the government, make the matter better? "Make the Legislative Council elective," say that party. But every one who knows anything of Lower Canada, and of the division of property which exists there, would agree that no increase of qualification, or of the elective franchise, which could be adopted, would render an elected Legislative Council anything more, in reality, than a counterpart of the House of Assembly. And if this latter body be, as it has proved itself to be, more than a match for the Government and Legislative Council united, what chance would the Government have against the two popular bodies, identical as they would then be in origin, principles, and interest? It would be far honester, and equally beneficial, to abolish the Legislative Council altogether, and let the Government act, if it could, with the House of Assembly alone.

This difficulty, arising as it did and does out of the different organization of society in the Colonies, compared with that of the mother country, could not, perhaps, have been prevented or remedied consistently with the determination of adhering to the model of the British Constitution. But I will now call the attention of your readers, if, indeed, I have not already exhausted their patience, to another instance of root and branch transplantation, where the simple process of a little previous pruning

would have rendered the tree much fitter for the new soil in which it was intended to flourish. By statute 14th George III., ch. 83, commonly called the Quebec Act, it is enacted, that "the criminal law of England shall be administered and observed as law in the province of Quebec, as well in the description and quality of the offence as in the method of prosecution and trial, and the punishment and forfeiture thereby inflicted; to the exclusion of every other rule of criminal law or mode of proceeding thereon, which prevailed in the province before 1764." And the same system was continued to Upper and Lower Canada by 31 Geo. III., c. 33, when the province of Quebec was divided into those two provinces. Now, that the introduction of the English criminal code and mode of procedure was, generally speaking, a real inestimable benefit to the French Canadians will scarcely be disputed by any one who values the trial by jury, or who considers our humane and temperate rules of evidence preferable to the entrapping and self-criminating mode of inquiry (I speak doubtfully as to the use of the rack), which was tolerated by the French law much later than 1760. And yet, with all my partiality for these admirable institutions, I doubt whether even in them improvements might not have been made, so as to have rendered them better adapted to the new scene of their exercise. I incline to think, for instance, that instead of insisting in criminal trials on absolute unanimity in the verdict of the jury, a majority—not a bare casting vote, but of not less than nine to three—would have been more suited to the materials of which juries are commonly composed in Lower Canada, by making allowance for one or two wrong-headed persons. With regard to *ex-officio* informations by the Crown officers, again, though I sincerely believe that this power, extensive and arbitrary as it is, has never been abused in that province, and though I feel morally certain that the late exercise of it by the Attorney-General, from my knowledge of that gentleman's character, was sound in point of judgment, as well as honest in intention, still I am by no means prepared to say, considering the necessary irresponsibility of the officers of government to the local legislature, that this power ought not to have been at least put under certain restrictions.

But it is in the body of the laws themselves, still more than in the mode of administering them, that I think alterations and modifications should have been made before they were thus sweepingly introduced. The great improvements which the last few years have brought about, in tempering the sanguinary severity of the law of England, form the best proof that, in the opinion of the public, that law was in many instances needlessly and therefore perniciously harsh, even in the highly luxurious and vicious state of society for which it was originally framed. How infinitely worse adapted, then, must it be considered for the mere prevention of crime among a people of such comparatively simple habits as the Lower Canadians. It may be said that it was open to the Colonial Legislature to temper the undue severity of the English enactments by its own local provisions: and this is true; but this power was certainly exercised but in few instances, at least up to the year 1822; and I recollect myself an instance of a man being hanged for horse-stealing somewhere about the year 1820. Now neither of the usual reasons for visiting this offence, or that of cattle stealing, with the extreme penalty—neither facility of perpetration, difficulty of detection, or a highly improved state of rural economy, requiring special protection—existed in Lower Canada.

It would be unnecessary, though not difficult, to multiply instances in which institutions, highly salutary in their general objects, have been productive of partial evil through the inapplicability of some of their details to the state of these Colonies. But it might be far from useless to consider this subject, with reference to the all-important point of the union of the two Canadas, more especially as regards fiscal regulations. A law respecting the revenue, or the mode of its collection, is introduced from the mother country, perhaps by mere implication, as part of an entire system, and takes effect in both Colonies. Some inconvenience or injustice is discovered, as affecting one of the provinces, which naturally seeks the removal of the evil. The other, a gainer probably by the unequal action of the regulation to the same extent that the sister province is a loser, resists all alteration, or at all events will lend no aid from its own Legislature, without which all the efforts of the sufferer are inoperative.

A united Legislature, based on fair principles of equality, would not suffer such a grievance to remain unabated a single session. And if my memory does not greatly deceive me, that was one of the arguments used in 1822 in support of the union of the two provinces when that measure was all but carried by the colonial administration, of which Lord Bathurst was then the head, and the present Sir Wilmot Horton the representative in the House of Commons.

I am, sir, your obedient servant,

M.

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